TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 202.

SAMUEL BELL OLDER, PETITIONER,

vs.

THE COMMONWEALTH TITLE INSURANCE AND TRUST COMPANY.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 463.

SAMUEL BELL, CLERK, PETITIONER,

vs.

THE COMMONWEALTH TITLE INSURANCE AND TRUST COMPANY.

INDEX.

	Original.	Print.
Caption	a	1
Transcript from the circuit court of the United States for the eastern district of Pennsylvania	1	1
Docket entries	1	1
Caption	2	2
Subpœna	2	2
Marshal's return	3	2
Bill of complaint	3	3
Exhibit A—Letter of The Commonwealth Title Insurance and Trust Company to Bell and Lincoln, clerks, June 23, 1896	6	5
Exhibit B—Letter of Bell and Lincoln, clerks, to title insurance companies, July 14, 1896	7	6
Demurrer	9	7
Opinion on demurrer	11	9
Answer	12	9
Exhibit C—Letter of Dechert et al. to Bell and Lincoln, clerks, May 18, 1896	16	13
Exhibit D—Letter of Bell and Lincoln, clerks, to title insurance companies, June 8, 1896	17	14
Replication	19	15
Order appointing examiner	20	16
Evidence for complainant	20	16
Testimony of Edward H. Bonsall	20	16
Charles S. Lincoln	25	20
Evidence for defendant	37	30
Testimony of Samuel Bell	37	30

12725—01——0

	Original.	Print.
Transcript from the circuit court of the United States for the eastern district of Pennsylvania—Continued.		
Evidence for complainant in rebuttal	42	33
Testimony of Edward H. Bonsall	42	33
John A. Barry	42	33
Austin R. Cadwallader	44	35
Wm. Smith	45	36
Hearing and submission	49	39
Opinion	49	39
Decree	50	40
Petition for appeal	51	41
Assignment of errors	51	41
Citation and service	52	41
Clerk's certificate	53	41
Hearing and submission	54	41
Opinion	54	41
Decree	58	44
Order for mandate to issue	59	45
Mandate	60	46
Clerk's certificate	64	47
Writ of certiorari	65	47
Stipulation as to return to writ of certiorari	68	48
Return to writ of certiorari	69	48

a Transcript of record. United States circuit court of appeals for the third circuit.

SAMUEL BELL, CLERK, appellant, *vs.* THE COMMONWEALTH TITLE INSURANCE AND TRUST Company, appellee.	No. . March term, 1901.

Appeal from the circuit court of the United States for the eastern district of Pennsylvania. Filed February 20, 1901.

1 THE COMMONWEALTH TITLE INSURANCE AND Trust Company, a corporation of the State of Pennsylvania and a resident in said State, having its principal office located in the city of Philadelphia, *vs.* SAMUEL BELL, ESQ., CLERK OF THE CIRCUIT COURT of the United States for the eastern district of Pennsylvania.	October session, 1896.

1896, Dec. 28. Bill in equity filed. Subpœna issued returnable first Monday in February next.
1897, Feb'y 1. Subpœna returned served.
1897, Feb'y 2. James M. Beck, esq., U. S. attorney, appears for respondent.
1897, Oct. 20. Demurrer filed.
1898, April 21. Argued sur demurrer.
1898, May 3. Opinion Dallas, J., overruling demurrer with leave to answer, &c.
1898, June 30. Answer filed.
1898, July 27. Replication filed.
1898, Nov. 1. Order of court appointing Francis H. Bohlen, esq., examiner (see order in minutes).
1899, Jan'y 23. Report of Francis H. Bohlen, esq., examiner, filed.
1899, July 10. Argued sur pleadings and proofs.
1900, Nov. 14. Reargument.
1901, Jan'y 3. Opinion granting complainant permission to inspect indices, &c.
1901, Jan'y 16. Order approving compensation of examiner filed.
1901, Jan'y 17. Decree.
1901, Jan'y 25. Petition for appeal filed and allowed.
1901, Jan'y 25. Assignment of errors filed.
1901, Jan'y 25. Citation allowed and issued.
1901, Jan'y 28. Citation returned, service accepted.

2 In the circuit court of the United States for the eastern district of Pennsylvania.

THE COMMONWEALTH TITLE INSURANCE AND TRUST Company, vs. SAMUEL BELL, ESQ., CLERK. | Oct. sess., 1896. No. 51.

Pleas and proceedings before the honorable the judges of the circuit court of the United States, eastern district of Pennsylvania.

It is thus contained:

Be it remembered that on the 28th day of December, 1896, comes the complainant by its counsel and files its bill of complaint against defendant, which being read is in the words and figures following, to wit:

UNITED STATES,
Eastern district of Pennsylvania, set.

The President of the United States, to Samuel Bell, esq., clerk of the circuit court of the United States for the eastern district of Pennsylvania:

For certain causes offered before the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, we command and strictly enjoin you, that laying all other matters aside and notwithstanding any excuse, you personally be and appear before the judges of the said court, at a session of the same court to be holden at Philadelphia on the first Monday of February next, to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said court shall have considered in this behalf. And have you then there this writ. And this you are in nowise to omit, under the penalty of four hundred dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 28th day of December, 1896, and in the one hundred and twenty-first year of the independence of the said United States.

JOHN A. MERRICK,
Pro Clerk of Circuit Court, U. S.

3 NOTE.—The defendant in this case is required to enter his appearance in the clerk's office of said court on or before the first Monday of February next; otherwise this bill may be taken pro confesso.

JANUARY 4th, 1897.

At Philadelphia, in my district, served the within writ on Samuel Bell, by giving him a true and attested copy thereof and making known the contents of the same.

So answers

JAMES B. REILLY,
U. S. Marshal,
Per ABRAM B. MYERS,
Deputy.

(Endorsed:) No. 51. Circuit court, October ses'ion, 1896. The Commonwealth Title Insurance and Trust Company vs. Samuel Bell, esq.,

clerk. Subpœna in equity. Returnable on the first Monday of February, next. Filed Feb'y 1, 1897. Samuel Bell, clerk. J. G. Johnson, solicitor for complainant.

In the circuit court of the United States for the eastern district of Pennsylvania.

THE COMMONWEALTH TITLE INSURANCE and Trust Company *vs.* SAMUEL BELL, ESQ., CLERK OF THE CIRCUIT COURT of the United States for the eastern district of Pennsylvania.	In equity. October sessions, 1896. No.

To the Honorable George M. Dallas, judge of the circuit court of the United States for the eastern district of Pennsylvania:

The Commonwealth Title Insurance and Trust Company brings this its bill against the above-named defendant and avers:

I. The Commonwealth Title Insurance and Trust Company is a corporation of the State of Pennsylvania and a resident in said State, having its principal office located in the city of Philadelphia, incorporated under the "Corporation act of 1874" and the supplements thereto for,
4 inter alia, the "insurance of owners of real estate mortgages and others interested in real estate from loss by reason of defective titles, liens, and incumbrances; for making insurances of every kind pertaining to or connected with titles to real estate, and for making, executing, and perfecting such, and so many, contracts, agreements, policies, and other instruments connected with such insurance of titles to real estate as may be requisite."

II. Said company is engaged, inter alia, in the business of insuring titles to real estate; in making searches for liens and incumbrances against the same; in giving certificates as to the condition of such real estate as regards the existence of liens against the same in any of the courts of the Commonwealth, including the courts of the United States, and in doing, on behalf of persons contemplating purchases of real estate, all that is necessary in the way of examination of the titles thereof and for liens and incumbrances against the same.

III. Samuel Bell, esq., defendant, is the clerk of the circuit court for the eastern district of Pennsylvania.

IV. As such clerk of said court he is required by acts of Congress to prepare and to keep, and he does prepare and does keep in his office complete and convenient indices and cross indices of the judgment records of said courts. These indices and cross indices, by virtue of divers acts of Congress, are ordered to be open to public inspection and examination.

V. It is impossible for the complainant to insure titles with safety or to examine into or to certify to its customers the condition of the titles of and the amount of incumbrances against the properties they desire to acq[illegible] without searching the said indices and cross indices of judgment records so kept by said clerk.

VI. The said clerk of said court, for a long time past, has been in the habit of requiring that a search should be made only by himself, to be

certified by him, for which certificate he has demanded and received compensation. He has refused the complainant access to the said indices under any circumstances for the purpose of ascertaining the condition of liens and incumbrances against the properties whose titles it is about to insure. This refusal has been made and persisted in, although the complainant has been at all times ready and willing to make such examination at times and under circumstances which would not in any way interfere with the safe custody of or convenient use by the clerk and those employed by him of said indices and cross indices.

VII. The complainant has been obliged to pay a very large sum of money for certificates of search ordered by it under such circumstances of compulsion, although it could have made such searches at comparatively no cost and was desirous thus to make them. A persistence by the clerk in said refusal will entail upon the complainant in the conduct of its necessary business as aforesaid an expenditure in excess of $2,000. It therefore avers that the matter in dispute between itself and the clerk of said court, to wit, its right to make personal examination on behalf of its customers of said indices and cross indices, involves a matter in excess of $2,000 in value.

VIII. On the twenty-third day of June, 1896, the complainant addressed to the clerk of said court a letter, of which Exhibit A, hereto attached, is a copy, and which it prays may be taken as a part of this bill as though incorporated herein. By this letter it requested the said clerk to say whether or not, if it sent from day to day persons representing it to his said office to ascertain the fact of whether or not there were incumbrances, and if there were in what form and to what extent against properties intended to be purchased by its customers, he, the said clerk, would give such representatives, seeking for such information, access to the indices, cross indices, records, and papers in his office, at such times and under such circumstances as would not interfere with the proper conduct of the business of the office of said clerk.

IX. To this letter a reply was received, of which a copy is hereto attached, marked "Exhibit B," which, it is prayed, may be taken as a part of this bill as though incorporated herein. The said access was refused.

X. Unless otherwise directed by your honorable court, the said clerk of your honorable court will persist in refusing the access desired to the books and papers in his office necessary to enable it to make searches for incumbrances necessary to be made in the course of its aforesaid business.

Being without adequate remedy at law, complainant craves equitable relief, as follows:

A. A decree ordering Samuel Bell, esq., the clerk of the circuit court for the eastern district of Pennsylvania, to permit the complainant, through its properly authorized representatives, from day to day, at such times and under such circumstances as will not improperly interfere with the said clerk and his assistants in the discharge of their duties, to have access to the indices and cross indices, and other books and papers in his office, showing the incumbrances against properties of which its customers are desirous of taking conveyances.

B. A decree ordering said Samuel Bell, esq., clerk of the circuit court

for the eastern district of Pennsylvania, to permit properly authorized representatives of your complainant, at such times and under such circumstances as will not unnecessarily interfere with the use thereof by him and by his assistants, to have access to the judgment indices and cross indices kept by him in such way and manner as will enable the complainant to prosecute its business, as an insurer of titles and
6 investigator of incumbrances against properties in the city of Philadelphia, by ascertaining the judgments existing against such properties.

C. General relief.

May it please your honor to grant unto your orator a writ of subpoena directed to the above-named defendant, commanding him, at a certain day, and under certain penalties therein to be limited, personally to appear before your honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises; and further, to perform and abide by such further order, direction, and decree as to your honorable court may seem meet.

And your orator will ever pray, &c.

COMMONWEALTH TITLE INSURANCE AND
TRUST COMPANY,
By , *President.*

Attest:

, *Secretary.*

EXHIBIT A.

PHILADELPHIA, *June 23, 1896.*

Samuel Bell, Esq., Clerk C. C. U. S., E. D. of Penna.
Charles S. Lincoln, Esq., Clerk District Court.

GENTLEMEN: We duly received your letter of the 8th inst. Without at present discus'ing the questions which are open between us, we desire, wherever we are employed to investigate the state of title and encumbrances of customers of ours, intending purchasers, or mortgagees, to ascertain whether in your office there are any encumbrances affecting the title.

Will you let us know whether, if we send from day to day persons representing us in such matters to your respective offices with a view to ascertaining the existence of encumbrances, you will give our representatives thus seeking for this information access to the records and papers in your office?

If you will do this, we will allow other matters to remain in abeyance until such time as we shall deem it necessary to bring them to a conclusion. If you say you will not do this, we will then apply to the courts for a mandamus.

Yours, truly,

THE COMMONWEALTH TITLE INSURANCE & TRUST CO.,
HENRY M. DECHERT, *President.*

7 EXHIBIT B.

CLERK OFFICES UNITED STATES COURTS,
Philadelphia, July 14th, 1896.

To Mr. Henry M. Dechert, esq., Prest. Commonwealth Title Ins. & Trust Co.,
Joseph L. Caven, esq., Prest. Real Estate Title Ins. & Trust Co., and Wm. R. Nicholson, esq., Prest. Land Title & Trust Co.

GENTLEMEN: Your separate letters of the 23d ult. (copies of each other and under one cover) came duly to hand. It is regretted that urgent official work, incident to the closing of the old and opening of the new fiscal year, has occasioned delay in answering same.

They present, in substance, a repetition of the first request contained in your joint letter of May 18th, and the considerations stated in the reply thereto of 8th June, set forth what is deemed to be the authority and duty of the clerk in the premises and are referred to as here repeated.

In addition to the considerations therein represented, it may be here stated that before the corporations you represent were created, indeed from the time of the enactment of the first law giving to the judgments of the courts liens to the present time, a period of over half a century, it has been the uniform practice of lawyers, conveyancers, and title insurance companies, your own included, for whomsoever acting, whether purchasers, mortgagees, or other parties in any manner concerned, to order on their behalf official examination by the United States of its records, for judgments, decrees, or other instruments constituting general liens on real estate, to be made and to have the results certified in the manner prescribed by law, upon payment to the United States of the charges therein provided.

This was recognized by all as the course contemplated by law. Inasmuch as the United States defrays the expense of maintaining its courts and court offices, and of making, collating, and preserving its records in an orderly condition, the provision of the law that litigants, petitioners, and others who are directly and specially benefited thereby should pay the small amount prescribed to be paid for each service mentioned has from the first been regarded as reasonable and proper, more particularly so as the amounts paid are as provided by the same law applied by the United States in reimbursement, pro tanto, of the sums expended by it for the especial advantage of those more immediately depending upon the courts, and the use of its offices and records.

The course which the legal and conveyancing professions, including your companies, have adopted and always followed, has com-
8 mended itself to the courts and their officers, and to the departments of the Government having supervision of the conduct and accounts of its officers in such matters and has established a practice binding upon you and the officers of the court, which neither is at liberty to disregard, annul, or to do anything to render ineffectual.

The officers of the court must neither neglect the work of the United States committed to them to be performed, in respect to its records, copies of records, searches for judgments, certificates, etc., nor must they fail to collect the specified duties or charges of the United States for same, and pay the amounts into the Treasury, just as they have uniformly done, and as it has been recognized to be their duty by all in the past having

business with the courts and their officers. Nothing has occurred to justify a departure from usual methods and practice.

While it is of course the duty of the clerks of the court to build up and maintain the Government's own work, and to collect and receive and pay into the Treasury the charges and revenues therefrom, they are not clothed with authority to give to any corporation or individual liberty to encroach, in any manner or for any purpose, upon that which the law recognizes as the Government's work; and any charges or emoluments from which are exclusively its own, not to be evaded in any manner directly or indirectly, and particularly not to be diverted on any pretext from the public to individual or corporate gain.

It would be a violation of duty by the clerks of the court to permit anyone employed in the court offices to avail themselves of their opportunities to give any individual certificates in respect to the records on their personal or other guarantees, and equally a violation of duty by the clerks to permit anyone employed by your corporation, or by any other corporation or individual, to serve in the clerk's offices, visiting them daily as proposed, to misuse the facilities of examination and inspection of the papers, books, and records of the court, opened to them as they are to all persons, by gathering information and materials for the purpose of entering upon and ousting the Government from its self-allotted and exclusive work of searching and certifying decrees and judgments from the records of its courts, and appropriating for themselves or others, as individual or corporate gains, the revenues for such services intended by law, and heretofore admitted to be due and collectable on behalf of the United States only.

Very respectfully,

SAMUEL BELL,
Clerk Circuit Court United States, Eastern Dist. of Penna.

CHARLES S. LINCOLN,
Clerk of the District Court U. S., Eastern Dist. of Penna.

9 In the circuit court of the United States for the eastern district of Pennsylvania.

THE COMMONWEALTH TITLE INSURANCE AND TRUST Company,
vs.
SAMUEL BELL, ESQ., CLERK OF THE CIRCUIT COURT OF the United States for the eastern district of Pennsylvania. } In equity.

Demurrer.

The defendant in the above case by protestation, not confessing or acknowledging all, or any of the matters or things in the said complainant's bill in equity to be true, in the manner, form, and substance, as the same are therein set forth, alleged, and complained of, doth demur to the whole and entire of said bill in equity, and for causes of demurrer showeth:

First. Because the complainant is not entitled to file, or have or maintain its said bill in equity against the defendant as clerk of this honorable court, for the matters and things alleged, charged, and complained against him as such clerk.

Second. Because this honorable court having complete control over the appointment, retention, and removal of the defendant as its clerk, and the lawful and proper discharge of his duties as such clerk, the complainant has a full, complete, and adequate remedy by petition to this honorable court, informing it of any malfeasance, misfeasance, misconduct, or neglect on the part of the defendant as clerk of this honorable court, and of the matters and things in said bill in equity alleged, charged, and complained against him as such clerk, if such matters and things do so constitute any malfeasance, misfeasance, misconduct, or neglect on his part as such clerk.

Third. Because there is no allegation in said bill of equity of the residence and citizenship of the defendant.

Fourth. Because the statement as to the jurisdictional amount as to the matter in dispute between the complainant and defendant, contained in Paragraph VII, of said bill in equity, is vague and uncertain and insufficient and argumentative.

Fifth. Because it is not alleged or stated in said bill in equity, that the matter in dispute between the complainant and defendant exceeds, exclusive of interest and costs, the sum or value of two thousand dollars ($2,000).

10 Sixth. Because the matters and things set forth and complained of in the said bill in equity are not such as to entitle the complainant to the relief therein prayed for.

Seventh. Because this honorable court has not jurisdiction of the matters and things as set forth and complained of in the said bill in equity.

Eighth. Because the said bill in equity is, in many respects, vague, insufficient, uncertain, and argumentative, and the structure thereof is not in accordance with the equity rules of this honorable court applicable to such cases.

Wherefore, the defendant demands judgment of this honorable court, whether he shall be compelled to make any further or other answer to the said bill in equity, or to any of the matters and things therein contained, and prays to be hence dismissed, with reasonable costs in his behalf sustained.

MICHAEL F. McCULLEN,
Assistant United States Attorney,
JAMES M. BECK,
United States Attorney,
Solicitors for Defendant.

We hereby certify that in our opinion the above demurrer is well founded in point of law.

MICHAEL F. McCULLEN,
Assistant United States Attorney,
JAMES M. BECK,
United States Attorney,
Solicitors for Defendant.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

Samuel Bell, being duly sworn according to law, doth depose and say that he is the defendant in the above case, and that the facts set forth in

the above demurrer are true to the best of his knowledge and belief, and that the said demurrer is not interposed for delay.

Sworn and subscribed before me this day of October, A. D. 1897.
[SEAL]

United States Commissioner.

11 In the circuit court of the United States for the eastern district of Pennsylvania.

THE COMMONWEALTH TITLE INSURANCE AND Trust Company
vs.
SAMUEL BELL, ESQ., CLERK OF THE CIRCUIT COURT of the United States for the eastern district of Pennsylvania.
} In equity.

DALLAS, circuit judge:

By section 2 of the statute of August 1st, 1888, entitled "An act to regulate the liens of judgments and decrees of the courts of the United States" (25 Stat. L., 357; Rev. Stat., Supp., p. 602), is provided "That the clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross indices of the judgment records of said courts, and such indices and records shall, at all times, be open to the inspection and examination of the public."

The plaintiff is a corporation engaged in the business of giving certificates and making insurances with respect to the existence of liens upon real estate, etc. It alleges that it has applied to the defendant, who is the clerk of the circuit court for this district, requesting him to give to its representatives access to the indices, cross indices, records, and papers in his office, at such times and under such circumstances as would not interfere with the proper conduct of the business of the office, for the purpose of ascertaining whether or not there were encumbrances against properties intended to be purchased by its customers. This request the clerk, it is alleged, has declined to accede to. It will be observed, and in view of certain decisions it should be noted, that the plaintiff's demand does not extend beyond the assertion of a right to make examinations for the specific purpose of ascertaining the existence or nonexistence of encumbrances upon properties which its actual present customers are intending to purchase. It is therefore this restricted right which is denied by the sixth ground assigned as cause of demurrer, but in my opinion Congress has expressly conferred it by enacting that "such indices and records shall, at all times, be open to the inspection and examination of the public." This question was before Judge Caldwell in the case of Chambers, 44 Fed., 786, and, after fully considering and discussing the whole subject in a manner which is quite satisfac-
12 tory, he arrived at the conclusion which I, also, have reached, and which seems to be the only possible one.

The other causes of demurrer assigned need not be now considered. The plaintiff may, if should he be so advised, move for leave to amend his

bill; and the defendant will have leave to answer *sec. reg.* and he may, by answer, again present any of the questions presented by this demurrer, other than that which has now been considered and disposed of.

Subject to this reservation, the demurrer is overruled.

GEO. M. DALLAS, J.

(Endorsed:) No. 51, Oct. sess., 1896. U. S. C. C. E. D. of Pa. The Commonwealth Title Co. vs. Bell, clerk. Opinion, Dallas, J. Filed May 3rd, 1898. Samuel Bell, clerk, per R.

In the circuit court of the United States for the eastern district of Pennsylvania.

THE COMMONWEALTH TITLE INSURANCE AND Trust Company
vs.
SAMUEL BELL, ESQ., CLERK OF THE CIRCUIT COURT of the United States for the eastern district of Pennsylvania.

In equity. October sessions, 1896. No. 51.

Answer of defendant.

The defendant in the above case, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception of all errors, uncertainties, and imperfections in the bill in equity in the above case, for answer thereunto and unto so much and such parts thereof as he is advised is or are material or necessary for him to make answer or response to, answering, saith:

1. The defendant admits to be true the statements made in paragraph of said bill.

2. The defendant in answer to paragraph 2 of said bill admits that the complainant is engaged *inter alia* in the business of insuring titles to real estate, but denies knowledge in its making searches for liens and
13 encumbrances against real estate existing in the circuit court of the United States for the eastern district of Pennsylvania, and denies its right to make such searches in said court, especially its right in doing on behalf of persons contemplating purchase of real estate, all that is necessary in the way of examination of titles thereto, and for liens and encumbrances against the same, so far as such examination for liens and encumbrances exist in or appear among the records of the said circuit court.

3. The defendant admits the truth of the statement made in paragraph 3 of said bill.

4. The defendant, in answer to paragraph 4 of said bill, admits that as a clerk of the circuit court, under the requirements of the acts of Congress, he prepares and keeps in his office complete and convenient indices and cross indices of the judgment records of said court.

And he further admits that by virtue of divers acts of Congress such indices and cross indices are ordered to be open to public inspection and examination, but defendant denies that complainant or its agents are, by virtue of these or any other acts of Congress, entitled to have access to or inspection and examination of such indices and cross indices for the purpose set forth in said bill.

5. Defendant denies the truth of the statements and allegations contained in paragraph 5 of said bill, and states that the complainant can and actually does insure titles to real estate with safety and examine into and certify the condition of the same to its customers without searching, examining, or inspecting the indices and cross indices of the judgment records so kept by defendant.

The defendant further states that complainant company, from the time of its entering upon its aforesaid business until the present time, has conducted, carried on, and managed its said business of, *inter alia*, insuring titles to real estate and in giving certificates as to the condition of such real estate as regards the existence of liens in the said circuit court with safety, and with convenience and profit, by having defendant, as clerk, make such examination and certify the result thereof to complainant, and paying therefor the lawful fees prescribed by the act of Congress as has been the immemorial custom and as is provided by acts of Congress.

6. In answer to paragraph 6 of said bill, the defendant states that he has refused complainant access to, and examination and inspection of, the said indices and cross indices for the purpose of ascertaining the condition of liens and encumbrances against properties whose titles it is about to insure for the reason that the said complainant is not, under the provisions of the acts of Congress, entitled to such access for such purposes.

Defendant further states that it is impossible for the said complainant to have access to the said indices for the purpose of examina-
14 tion and inspection thereof without seriously interfering with the safe custody of and the convenient use by him and those employed by him as well as other persons lawfully entitled to have access to the said indices and cross indices of the judgment records in the aforesaid circuit court.

Defendant also states that he has only demanded and received from complainant compensation for examination and certification of such judgment records when the same were ordered of him.

7. In answer to paragraph 7, defendant believes that complainant can make searches and examination of the indices and cross indices of the judgment records of the said circuit court, if it should be given access thereto, at comparatively little or no cost to complainant company, and that it was desirous of so doing, but defendant denies the right of said complainant to have access to said indices and cross indices and make examination of the same for the purpose of carrying on its business as aforesaid, and for this reason he has persisted in his refusal to said complainant to have such access. Defendant further states that he has no knowledge whatever as to the amount of business now or hereafter to be carried on by complainant nor what expenditure it will make in ordering examinations for liens and judgments and purchasing certificates of search thereof from him as such clerk in the future.

8. Defendant admits as true the statements contained in paragraph 8 of said bill, but by way of further answer thereto states that on the 18th day of May, A. D. 1896, said complainant and others addressed to defendant and to Charles S. Lincoln, esq., clerk of the United States district court for the eastern district of Pennsylvania, a certain letter, a copy of which is hereto attached (marked "Exhibit C"), and which he

prays may be taken as a part of this answer as though incorporated herein.

9. The defendant admits as true the statements contained in paragraph 9 of said bill and, by way of further answer, states that on the eighth day of June, A. D. 1896, the defendant and the said Charles S. Lincoln, clerk of the United States district court as aforesaid, addressed to the complainant a letter, a copy of which is hereto attached (marked "Exhibit D"), which he prays may be taken as a part of this answer as though incorporated herein.

10. In answer to paragraph 10 of said bill, defendant states that the said complainant is not entitled, under the acts of Congress, to have access to the said indices and cross indices of the judgment records and the books and papers in the office of the said circuit court for the purpose of examining and inspecting the same, and further that the said complainant company can and does, and has heretofore, conducted and carried on its said business with safety, convenience, and profit, in the manner and by the means as stated in paragraph 5 of this answer,
15 and that his persistence in refusing complainant the access desired has been, and is now, for these reasons.

11. And by way of further answer unto the allegations and statements in said bill contained defendant states that by virtue of the acts of Congress he prepares and keeps in his office complete and convenient indices and cross indices of the judgment records of the said circuit court, and performs and discharges all other duties of him required by said acts of Congress appertaining to his said office as clerk, and for the faithful and proper discharge of his said duties as clerk of the said court he is required and has given bond, with sufficient security, in the sum of twenty thousand dollars, which said bond can and may be under the provision of law increased to and required of him in the sum of forty thousand dollars; that his compensation for the preparation and keeping of said indices and records and the performance of all other duties appertaining to his said office as clerk, and for the payment of clerical hire, stationary, and other expenses connected with said office is entirely dependent upon the fees and emoluments received by him for examining the indices and cross indices of the judgment records in said circuit court and certifying the result thereof when requested to do so by complainant and others, and for the performance of other duties required of him; that the various acts of Congress relating to the defendant's duties as clerk and his compensation for the performance thereof contemplate and provide that his said office as clerk shall be self-sustaining, and that the fees and emoluments received by him shall be sufficient to cover his compensation, as well as clerical hire, stationery, and all other expenses connected with his office; that the fees and charges collected by him as clerk for searching the indices and cross indices of the judgment records in said circuit court and certifying the result thereof to complainant and others have been the main source from which the payment of his compensation and the payment of the clerical hire and other expenses necessarily connected with his office have been and are still derived. The defendant further states that the complainant is not entitled, under the provisions of law, to have access to said indices and judgment records for the purpose for which it desires the same; and, further, that such access to and examination and

inspection of the records by the complainant and others will deprive the defendant of the performance of such service and the fees and emoluments chargeable therefor, which he, the defendant, alone is directed and entitled by law to perform and charge and receive; that if complainant and others are allowed such access to and examination of said indices and records for the purpose which complainant requests the same the office of defendant as clerk of said circuit court will not be self-supporting, and the fees and emoluments collected by him from other sources will not be sufficient to pay him the compensation to which he is entitled by
16 law and make payment of the clerical hire and other expenses necessarily entailed upon him and connected with the proper and full discharge of all his duties as clerk of said circuit court.

Without this that there is any other matter, cause, or thing in said bill in equity contained, material or necessary to be answered unto and not herein and hereby well and sufficiently answered unto, confessed, traversed, and avoided or denied, is true; all which matters and things the said defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

(Signed) SAMUEL BELL,
Clerk, etc.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

Samuel Bell, the defendant in the above case, being duly sworn according to law, deposes and says that the statements contained in the foregoing answer are true to the best of his knowledge and belief.

SAMUEL BELL.

Sworn and subscribed to before me this 30th day of June, A. D. 1898.

WM. W. CRAIG,
United States Commissioner
Eastern District of Pennsylvania, Philadelphia.

EXHIBIT C.

PHILADELPHIA, *May 18, 1896.*

SAMUEL BELL, Esq., and CHARLES S. LINCOLN, Esq.

GENTLEMEN: We will be obliged if you will let us know what hours of the day it will be convenient to you for our clerk to make abstracts from the judgment indexes of the circuit and district courts, showing judgments entered therein, and also what arrangement we can make with you to furnish the search bureau representing our companies with a daily statement of all judgments entered in the circuit and district courts of the United States for the eastern district of Pennsylvania.

We will appreciate an early reply.

Yours, truly,

HENRY M. DECHERT,
President The Commonwealth Title Insurance and Trust Company.

J. L. CAVEN,
President The Real Estate Title Insurance and Trust Company of Philadelphia.

WM. R. NICHOLSON,
President The Land Title and Trust Company.

17 EXHIBIT D.

CLERKS' OFFICES OF THE
CIRCUIT AND DISTRICT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF PENNSYLVANIA,
Philadelphia, June 8, 1896.

To HENRY M. DECHERT, Esq., *President Commonwealth Title Insurance and Trust Co.;* JOSEPH L. CAVEN, Esq., *President Real Estate Title Insurance & Trust Co.; and* WM. R. NICHOLSON, Esq., *President Land Title and Trust Co.*

GENTLEMEN: The request contained in your letter of the 18th ult. are of an unusual character, involving a consideration of the interests of the Government as well as the duties of the clerks of the court in respect to the same, and answer was necessarily delayed until the business pressing at the time of its reception had been attended to. With this apology for delay, the clerks present the following considerations in reply:

Every item of the fees and earnings of the clerks' offices of the United States courts under the provisions of law enacted by Congress belongs to the United States.

From the gross earnings all expenses, including rent, furniture, fuel, light, stationery, clerk hire and compensation, etc., in so far as they are allowed by the Department of Justice and the accounting officers of the Treasury, are paid, and the surplus is carried into the Treasury of the United States as part of its revenues.

While the records of the courts have always been open to the inspection and examination of any person desiring to see them for their information and guidance, the officers of the courts have no authority, nor can they give to any other person authority, to so deal with the records that the fees and dues which might otherwise be received from individuals and paid into the Treasury for the maintenance of the officers or for other purposes shall in any manner be diverted to private gain.

Compliance with your requests would, in effect, be simply entering into an arrangement that you may be supplied and have in your office a complete certified index of the judgments of the courts, thus facilitating you in superceding the Government work of searching and certifying judgments and substituting your own certificates, thereby reducing the amounts received by the United States for such services in a very large sum of thousands of dollars annually and correspondingly increasing your own gains.

The privilege of inspection and examination of the records of
18 the court was not intended and does not warrant any person to so abuse it as to enter into competition with the Government in supplying copies and certificates, etc., from the records and thus diverting revenues of the Government from public to private uses.

Arrangements such as proposed by you, if proper as to the particular service you desire to absorb to your own profit, would, on like suggestion of your own or similar companies, be equally proper as to any other class of service or work of the court offices for which the Government has prescribed fees or dues to be charged and collected.

Thus all the earnings from every class of fruitful work, with or without the consent of the custodians of the court records, would no longer be

gathered into the Treasury of the United States, but pass into the hands of a few enterprising individuals and corporations who, by various ingenious methods, would supplant the Government in its own work and divide the gains between themselves, leaving the Government to provide for the expenses and maintenance of its own offices from other sources of income, instead of enabling each department so far as possible to be self-sustaining and not to become a burden upon the public Treasury.

It is not believed that any department of the Government has in itself the power or would assume to give to you or to any individual the privilege you ask of being supplied with material and placed in a position the more readily to compete with and to supplant the Government in its work and to absorb and appropriate its revenues. Certainly the clerks of the courts whom you address have no such authority. On the contrary, to allow anyone on any pretext to do so would be a violation of their duties and obligations as officers of the Government.

Very respectfully,

SAMUEL BELL,
C. C. U. S., E. D. of Pa.
CHARLES S. LINCOLN,
Clerk of District Court.

(Endorsed:) No. 51. October sessions, 1896. In the circuit court of the United States for the eastern district of Pennsylvania. In equity. The Commonwealth Title and Trust Company vs. Samuel Bell, esq., clerk of the circuit court of the United States for the eastern district of Pennsylvania. Answer. Michael F. McCullen, assistant United States attorney. James M. Beck, United States attorney, for defendant.

19 In the circuit court of the United States for the eastern district of Pennsylvania.

THE COMMONWEALTH TITLE INSURANCE AND Trust Company
vs.
SAMUEL BELL, ESQ., CLERK OF THE CIRCUIT COURT of the United States for the eastern district of Pennsylvania.
} In equity.

To the honorable the judges of the circuit court for the eastern district of Pennsylvania:

The above-named repliant, saving and reserving to itself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said respondent, for replication thereunto says that it does and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said respondent, and that the answer of the said respondent is very uncertain, evasive, and insufficient in law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied is true; all which matters and things this repliant is ready to aver, maintain, and prove,

as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

JOHN G. JOHNSON,
Solicitor for Complainant.

(Endorsed:) No. 51, Oct. sess., 1896. The Commonwealth Title Co. vs. Bell, replication. Filed July 27th, 1898. Samuel Bell, clerk.

In the circuit court of the United States for the eastern district of Pennsylvania.

THE COMMONWEALTH TITLE INSURANCE AND Trust Co.
vs.
SAMUEL BELL.

20 And now, November 1, 1898, on motion of John G. Johnson, esq., solicitor for complainant, the court appoints Francis H. Bohlen, esq., to be examiner in the above-entitled cause.

GEO. M. DALLAS, *Cir. J.*

(Endorsed:) No. 51, Oct., 1896. Commonwealth Co. vs. Bell. Order appointing examiner. Filed Nov. 1, 1898. Samuel Bell, clerk.

In the circuit court of the United States for the eastern district of Pennsylvania.

THE COMMONWEALTH TITLE INSURANCE AND Trust Company.
vs.
SAMUEL BELL, ESQ., CLERK OF THE CIRCUIT COURT of the United States for the eastern district of Pennsylvania.

In equity. October sessions, 1896. No. 51.

Testimony taken by Francis H. Bohlen, esq., examiner, appointed by the United States court for the eastern district of Pennsylvania, at his office, room 558 Bullitt Building, Philadelphia, Pa., on Tuesday, the twentieth day of December, 1898, at 4 o'clock p. m.

Present, John G. Johnson, esq., for complainant; Michael F. McCullen, esq., assistant United States attorney, for defendant.

EDWARD H. BONSALL, being duly affirmed, deposes as follows:

Direct examination by Mr. JOHNSON:

Q. You are the vice-president of the Commonwealth Title Insurance and Trust Company, and have been for some years?

A. Yes, sir.

Q. It is a Pennsylvania corporation, incorporated under the act of 1874 and supplements?

A. Yes.

Q. As a title insurance and trust company.

A. Yes.

21 Q. What is its business?

A. Its business is the examining and insurance of titles to real estate.

Q. Principally situated where?

A. In the city of Philadelphia.

Q. Is it engaged in any business regarding searches?

A. Yes; it is engaged in the business of issuing certificates of search.

Q. Is part of its business receiving requests to examine titles that are about to pass?

A. Yes.

Q. Then it does what?

A. It examines as to incumbrances and issues certificates as to the title and any incumbrances that may exist.

Q. Does that include examination of the title generally?

A. Yes.

Q. You issue a certificate or policy that the title is good?

A. Yes; a policy that the title is good, and no liens, judgments, or other incumbrances affecting it.

Q. Are you able to insure titles with safety without either an examination of the records of the United States court for judgments yourselves, or having certificates of search from the clerks?

A. We are not able to make insurance without doing either one or the other.

Q. Up to the present time you have been doing what?

A. Up to the present time we have been obtaining certificates from the clerks of the courts.

Q. Have you been permitted up to this time, yourself or your employees, to examine the judgment indices and cross indices, to see what was the condition of the title?

A. We have not been permitted to make such examination. We have requested permission to do so, but it has been declined.

Q. What has been the requirement of the clerks of the circuit courts of this district with reference to that?

(Question objected to for the reason that it has not been stated that the clerk has made any requirement whatever of this witness, either for himself or on behalf of his company.)

A. In order to obtain the information which we require in making the insurance, so far as concerns judgments in the United States court, the clerks have required that we order and obtain from them official certificates as to searches, having declined to allow us to examine the indexes ourselves or have them examined on our behalf.

22 Q. You have read the originals, of which copies have been made, and form Exhibits A and B, appearing at the end of the bill, covering correspondence in June and July, 1896, between your company and the clerks of the courts, have you not?

A. I have; yes, sir.

Q. Are those correct copies of the letters which passed?

A. They are correct copies.

Q. The aggregate cost of the certificates of search which you have been obliged to take out has been considerable, has it not?

A. Quite considerable. It would amount in round figures to in the neighborhood of $3,000 per year to our company alone.

Q. The cost of making searches yourselves or by your employees would have been very much less, of course?

A. Comparatively trifling.

Q. About how much time would be consumed in making the searches which you require to make in connection with the titles which you are examining for your customers; how much time per day?

A. I do not think it would take over fifteen minutes per day. Of course, that is largely an estimate, as we have never been permitted to examine the indexes.

Q. Could you make such an examination, do you know, without in the least degree interfering with the work of the office?

A. We could.

Q. Or without interfering with the safety of the books or records in any way?

A. We could. We already make such examinations in the courts of common pleas of this city, where the judgments are much more numerous, without discommoding the public or the office.

(Answer objected to by the defense.)

Q. Have you demanded to do it in such a way as would in any way incommode the public or interfere with the clerks in doing their business?

A. We have not. We have offered to do it under such regulations as would prevent its interfering with the public or the safety of the books.

Q. I think you had been endeavoring to obtain access on broader terms than those embodied in your letter of June 23d, 1896, anterior to the sending of that letter, had you not?

A. I think we had. The Exhibit C in the answer embodied pior demands. The Exhibit C is a letter addressed by the presidents of the three title companies to the clerks of the United States courts.

Q. Then you narrowed your demand to the letter of the 23d of June, 1896?

23 A. Yes, sir.

Q. Intending to limit yourselves to that?

A. Yes.

Q. That was done under the advice of counsel, I take it for granted?

A. It was.

Cross-examination by Mr. McCULLEN:

Q. When was the Commonwealth Title Insurance and Trust Company incorporated?

A. It was some time in the summer of 1886—about July, 1886.

Q. From July, 1886, to January, 1896, what was the course your company pursued as to obtaining searches for liens and incumbrances against property in this county or liens and incumbrances in the United States courts of this district?

A. We ordered and obtained official certificates.

Q. Did your company, from the time of its incorporation up to January 1st, 1896, follow that course with safety and convenience and with profit?

A. A reasonable amount of profit, but not as great an amount as if we could have had access ourselves.

Q. In paragraph 5 of the bill it is stated:

"It is impossible for the complainant to insure titles with safety, or to examine into or to certify to its customers the conditions of the titles of and the amount of incumbrances against the properties they desire to acquire without searching the said indices and cross indices of judgment records so kept by said clerk,"

namely, Col. Samuel Bell, clerk of the United States court.

A. That is correct.

Q. Then you mean to say that your company cannot with safety certify the condition of properties in Philadelphia, so far as liens in the United States courts are concerned, without searching yourselves or by your agents?

A. We cannot do it with safety without searching by ourselves or agents or obtaining a certificate from the clerks of the courts.

Q. For the past three years has your company or any of its agents ordered searches from the United States circuit court of this district?

A. It has.

Q. Through your own agents?

A. Yes.

Q. Who are your agents?

A. We have employees. The searches are probably ordered
24 in the name of the search bureau, of which I am the treasurer and one of the managers.

Q. Of what is the search bureau composed?

A. The search bureau is composed of representatives of the Real Estate Title Insurance and Trust Company, the Land Title and Trust Company, and the Commonwealth Title Insurance and Trust Company, for the purpose of procuring searches for those three companies.

Q. About how many searches does your company alone order from the clerk of the United States circuit court here a day?

A. In all the matters, including title matters and matters in which certificates are issued, we order on an average of fifty names a day.

Q. Is it not a fact that all the names to be searched against for judgments and incumbrances by the three companies named by you are sent to the search bureau, so called, and by its agents ordered from the clerks of the various courts?

A. The search bureau is the agent of the three companies. It is a fact that the names are sent to that bureau from the different companies, and by it ordered from the clerks of the courts.

Q. In other words, the fact is that if the Commonwealth Trust Company has a search against John Smith, and the Real Estate Company has another one against John Brown, and the Land Title Company has one against John Jones, that they are all sent into the search bureau, and by its agent, whether they are your agents or not, sent to the clerks of the various courts here to ascertain as to the existence of liens or incumbrances?

A. That is the course of the business at present.

Q. If the agents of the search bureau obtain the facts as to the existence or nonexistence of liens and judgments against the various names

ordered by them, is not that information imparted by the agents of the search bureau to each and all of the three companies, whether ordered by one or all? In other words, is not the information distributed?

A. I would answer it in this way: If the same name happens to be ordered by two or more companies, the information would be furnished to each of those companies. The arrangement of the search bureau was simply as a matter of convenience to the three companies, to minimize as far as possible the labor and expense of the work which is common to each.

Q. Does not your company contribute at least one-third towards the maintenance of the search bureau?

A. It does.

Q. Does not your company get all the information at the disposal of the search bureau—all the information that the search bureau obtains as to all searches made by it for any of the three companies?

25 A. We only obtain what we require in the transaction of our business.

Q. Cannot your company by simple request obtain information about the existence or nonexistence of judgments against names searched by it for the other two companies?

A. I suppose we can.

Q. Answer yes or no, please.

A. The Commonwealth company can obtain any information which the search bureau possesses.

Q. You stated in your examination in chief that the clerk of the court, Colonel Bell, required that he should make a search, and that such search should be made by him alone; is that correct?

A. That is correct. If we desired information as to judgments, that was the only way in which it could be obtained.

Q. Has that demand and that requirement been made by him in writing, or was it in conversation, or in what way was it made?

A. Verbally.

Q. To whom?

A. To me, among others.

Q. Did you call upon Colonel Bell personally about this matter?

A. Yes; I called there in person.

Q. You asked that your company or your authorized agents be given access to the indexes and cross indexes, did you?

A. Yes; both verbally and in writing.

DECEMBER 27th, 1898.

Present, John G. Johnson, esq., M. F. McCullen, esq., assistant United States attorney.

CHARLES S. LINCOLN, being duly sworn, says:

Q. Lincoln, are you a clerk in the United States district court?

A. I am.

Q. How long have you been such clerk?

A. Since 1862; I was deputy clerk then, and in 1875 I was appointed clerk of the district court.

Q. Referring to "Exhibit C," in the copy of the answer filed by yourself and Colonel Bell, clerk of the circuit court, you both received this

letter signed by Henry M. Dechert, president of the Commonwealth
26 Title Insurance and Safe Deposit Company, and the presidents, respectively, of the Real Estate Title Insurance and Trust Company and the Land Title Insurance Company.

A. These letters were received by both the clerk of the circuit and of the district courts.

Q. And in reply thereto you sent a letter, a copy of which is marked "Exhibit D" in this exhibit, dated June 8th, 1896?

A. Yes, sir.

Q. Referring to "Exhibit A," marked by examiner in the bill filed, Colonel Bell and yourself received such a letter, dated June 23d, 1896?

A. We did.

Q. And in reply thereto you sent to the presidents of the three named companies a letter, a copy of which is marked "Exhibit B" in the bill, marked by the examiner, dated July 14th, 1896?

A. We did.

Q. Are you acquainted with the manner in which the clerk of the circuit court keeps indices and cross indices of judgments in his court?

A. I am.

Q. Are the indices and cross indices kept by him similar to those kept in your court by you?

A. They are.

Q. After Colonel Bell and yourself received the letters referred to, did you have a conference as to the subject?

A. After Colonel Bell and I received each of the letters, we conferred together and made the replies which you have referred to.

Q. In your replies did you deny the right of the complainant company to have access to the indices and cross indices for the purposes for which they requested the same, as stated in the bill?

A. I did.

Q. Why did you deny such right, or claim, rather?

A. Because I thought that the result of it would annul the official earnings of the United States in the matter of searches or judgments, and certifying the results of same under section 828 of the Revised Statutes, and gathering in for the United States the fees for the searches.

Q. Do you know whether or not Colonel Bell has given a bond for the faithful performance of duties as clerk of the circuit court?

A. He has given such bond in the sum of $20,000, as required by the law, and the amount being fixed by the Attorney-General of the United States under the law provided for the purpose.

Q. Under the law, may or may not the bond given by him be increased?

27 A. Under the same law requiring, in such bond, the Attorney-General can, in his discretion, require the increase of the bond in a sum not exceeding $40,000.

Q. You gave a bond under the same obligations?

A. The same bond is required of the clerk of the district court under the same law and for the same amount.

Q. Mr. Lincoln, what has been the custom of the clerk of the circuit court as to certifying the existence or nonexistence of liens and judgments in both United States courts?

A. Parties desiring to ascertain judgments against any party have applied to the clerks of each court to make search and certify the result of the search, whether there are any judgments affecting property to be sold or mortgaged.

Q. Mr. Lincoln, can the three trust companies named in the bill and the answer conduct their business of insuring and investigating titles with safety and convenience, so far as liens and incumbrances may exist in the United States courts in this district, do so by ordering searches from you and Colonel Bell?

A. They can.

Q. What has been the practice for the three trust companies in ascertaining the existence of such liens and incumbrances since the time of their organization?

A. Including the companies and all other persons who have searches to make, they have given orders to the clerk to have searches made, and they have been made for them. In the case of these three companies, there has been a bureau, called a search bureau, with which they are connected, and through this bureau the orders for these companies have been made and searches given to the search bureau accordingly.

Q. Then, in other words, Mr. Lincoln, the three companies up to the present time have been ordering searches through the agency of the search bureau?

A. Since the organization of the search bureau I believe the searches have been ordered in that manner. Prior to that I believe they were ordered by the company itself.

Q. To whom do the fees collected by Colonel Bell and yourself belong for making searches for judgments and liens?

A. All official earnings, including these fees for searches, belong to the United States.

Q. In what way are the salaries of Colonel Bell and yourself and such under clerks as are in your respective offices paid?

A. These fees collected and received by the clerks are accounted for annually with the accounting officers of the Treasury of the United
28 States, and the expenses and allowances for clerk hire, stationary, etc., approved by the judge of the court and allowed by the accounting officers are paid, and after they are paid, if their remains sufficient of the earnings in each instance, the clerk of the circuit court and of the district court are each allowed the sum of $3,500. If there is not such amount remaining as $3,500, the clerk shall only receive what remains.

Q. What has the main source from which the fees and emoluments collected by Colonel Bell and yourself been?

A. The most fruitful source of official earnings is that for searches. I examined for the years 1895 and 1896 and I find that the result of all the official earnings received from individuals amounted to about $9,200, including the earnings from searches.

Q. As to each office or both offices?

A. As to my own office. The earnings from searches in these same years averaged $4,900 in round numbers, and, that after paying the expenses for clerk hire, stationery, and all other official expenses, including also $3,500 as clerk's fees for each year, amounting to $7,800, leaving

$1,350 as a surplus, which was paid into the Treasury of the United States by the clerk of the district court. I can not tell precisely what such an account of the circuit court might exhibit, but believe that it would approximate the same figures.

Q. About how many names a year are searched against by Colonel Bell and yourself?

A. I should say thirty-three thousand names in each court are searched primarily on the first order given by them for search, and the parties or bureau send to have these searches extended, where the transactions are not immediately executed, and they order then a search to bring down the original search. Those brought down within thirty days are brought down without charge beyond the fifteen cents per name. I can not say how many such searches are required to be made, but they are very considerable—a very large number.

Q. Mr. Lincoln, you have read the prayers in the bill filed here—prayers "A" and "B?"

A. I have.

Q. If these prayers "A" and "B" be granted, will it be possible for Colonel Bell or yourself, providing that other companies and individuals engaged in similar business to the complainant companies, will it be possible for you two clerks to discharge your other duties as required by law and according to the terms of your bonds?

A. I believe that if access were given to each of these companies and to all others desiring to have access to the indices and records of the court it would interfere with the clerks in their attention to the duties of their office in thus using the indices and records, as also to give access to the same to members of the bar and others visiting the offices
29 who might require it, and I believe if a large number of names were searched against by these companies and all desiring to make the searches that it would require at least five or six hours daily, and this provided that each one were ready to take up his portion of the work.

Q. Would such access, if permitted, interfere with the safe custody and discharge of duties incumbent upon Colonel Bell and yourself?

A. I think the clerk of the circuit court is careful of his records, for the preservation of the same, and that they should not be improperly tampered with.

Q. If such access as asked for by the complainant company be given to it and other companies and individuals, would it be possible for Clerk Bell and yourself to properly and carefully watch over the indices and cross indices?

A. It would be difficult and, I think, almost impossible to do it and have the other duties of the office attended to by us.

Q. Would such access interfere with the collection by Clerk Bell and yourself of the fees now chargeable by you under law, for making and certifying the result of such searches?

A. It would facilitate the use of the judgment indices in such manner that copies or abstracts of the same could be taken away, and searches, instead of being made in the offices, or certificates of search, instead of being made in the offices, would be made by those having access to the indices.

Q. Mr. Lincoln, I hand you four certificates of search, two issued from

the clerk of the circuit court and two issued from your own office, and, fifth, a search from the court of common pleas, the first four of which are against certain parties named thereon, all dated January 15th, 1898. Will you tell me, if you can, who ordered these searches?

A. They were ordered by the search bureau.

Q. Now, will you please look at the first search, the first part of which is issued from the circuit court's office? Now, will you please look on the back of it? What do you find there?

A. I find a memorandum of names.

Q. How many names?

A. Fifteen names.

Q. Were they on that search when it was issued from the clerk's office?

A. They were not.

Q. Now, have you looked at the index kept in the circuit court's office?

A. Yes, sir.

30 Q. Will you state whether or not the names on the indices are arranged in the same order as the names are on the back of that search?

A. They are copies from the index in the order in which they occur in the index.

Q. I hand you a batch of other searches dated November 13th, 1897. Who ordered these searches?

A. These were also ordered by the search bureau.

Q. I believe there are two here and two in the second batch which I handed you. Two certificates of search, with names on the back of them, and three certificates of search in the first batch. These are copies from the indices of the two courts, and they are in precisely the same order as they appear in your indices?

A. I believe they are.

Q. How did you get these searches back?

A. The search bureau brought these searches back to the clerk's office in the shape in which they now are.

Q. Do you know which gentleman of the search bureau brought them back?

A. No; I do not remember who brought them back; a lad, or some clerk of the search bureau.

Q. Do you know the purpose for which they were brought back?

A. They were brought back for the purpose of the searches being extended for a few days to cover the period of time when they had been given out and the time of the execution of the papers, as I believe.

Q. Well, how is it you now retain them?

A. I retain them because these copies of our indices were made upon them.

Q. With or without the knowledge of yourself and Mr. Bell?

A. Without our knowledge or consent.

Q. Well, did you have any conversation with the agent of the company when he called for this record?

A. Subsequently one of the agents of the company was in the office making examination of the indices of the circuit court, and he came over to my desk to examine the index of the district court. I asked him

whether he was making copies of the indices. He informed he was not, and did not. I then showed him these papers with these names written on the backs of the searches, and called his attention to the fact that they were copies, so far as they went, of the judgments entered in the indices.

Q. You, therefore, refused to hand them back to him?

A. He did not demand them until some days after, when he asked them back. I told him that I would give him a copy of these
31 searches—a certified copy of the searches—without the pencil marks which were upon the originals.

Cross-examination:

Q. The indices and cross indices in your office were in the book?

A. In my office and in the circuit court also.

Q. How many names, all told, were in the indices?

A. I have never counted them.

Q. A couple of hundred, I suppose?

A. I suppose there are seven or eight hundred in the year.

Q. Subdivided alphabetically?

A. Alphabetically.

Q. About how many pages, all told, in that book? How many pages on which there is writing of names?

A. I should suppose that there were three hundred and fifty to four hundred in each office. Some are full.

Q. How many clerks in your office are assigned to the making of searches and to the signing of the certificates?

A. I do not sign the certificates; they are signed by the clerks making the examinations.

Q. About how many clerks in your office make examinations and sign certificates?

A. About two of them do it regularly, and if they are otherwise occupied I do it. The general business of searching is conducted by two.

Q. About how many hours a day do you think each one consumes by making the searches?

A. Well, I should suppose about three hours, probably.

Q. Each one, or three all told.

A. Three for making the examinations and three for writing out searches.

Q. But the actual use of the book by all the clerks making searches would take about three hours?

A. That is all our clerks need.

Q. The office is open at nine o'clock and closes at three?

A. Yes; that is the average.

Q. That book, of course, which contains indices and cross indices is very frequently not in the actual physical use of any clerk?

A. Very frequently.

Q. There are times, then, certainly half of the day, when that book containing indices and cross indices is not in use by your clerk making entries therein or searches? That is a fact, is it not?

32 A. That is so.

Q. Would there be as many as three hours in every day in

which that book could be used by some outsider making examinations in it without interfering with its use by you or your clerks?

A. I and my clerks would have to use that book when the opportunities occurred from pauses or stops in other business in which we might be engaged. We could not be continuously employed in searches, but two of us make searches as the opportunity occurs.

Q. Then, if some one else gave the book to you or your clerks when you needed it there would be many times during the day in which persons so giving it could look into it without interfering with you or your clerks? Is that not so?

A. That is so, provided it could possibly be arranged that one person only and not a dozen or fifteen might be wanting to look at in general.

Q. Could not, then, a person waiting the convenienee and necessities of yourself and your clerks, look at that book frequently during the day, if he regarded such use as a convenience by you, without interfering with you or your clerks and yet seeing what was in the book?

A. Any person waiting in the office during the entire day could find such opportunity.

Q. There are many times during the day, are there not, when that book is lying unopened and unused?

A. There are.

Q. Mr. Bonsall has said that all the searching required by the three title companies who addressed the communication to you could be done taking up half an hour of each day. What is your judgment as to that fact?

A. If they have had an average, say, of fifty names a day to make search against, and in both courts, I think that it would take them two and a half minutes for each name. This is without counting the pauses when the name searched against should occur and require examination, and without the delay incident to interruption of such clerk in the work by any other person desiring to look at the index.

Q. Suppose that the three title companies were willing to take up thirty minutes of each day to make their searches, undertaking to hand the book upon the instant of demand for use by yourself or any of your clerks, not taking the thirty minutes continuously, but in the intervals when you did not need to use the book, would that interfere in any way with the work of the office?

A. In itself, as thus stated, probably that can be done without interference; but as there are other persons and corporations that
33 might also want to do the same thing, to provide for such a contingency would be an interference.

Q. Are not the three title companies I have named customers for at least five-sixths of the searches which you certify?

A. I have not the means of saying what the amount of their searches are, because I do not keep a separate account of each party making searches.

Q. Is not the average amount paid for searches about $9,000?

A. Mr. Bonsall now pays me in check, and all their amounts paid in check show the proportion of the business better than I could state.

Q. Do the three companies pay the two officers $9,000 a year for searches? If so, that will make about what proportion of all the receipts during the year from searches in the two offices?

A. Wdl, they do not pay any such sum as that.

Q. Wdl, do they pay the two officers together, say $8,900, instead of $9,000?

A. I had the impression they did not pay us over $3,000 apiece.

Q. About how much time per day is required to make entries in the indices and cross indices; in five minutes would you say? A hundred of judgments now and then?

A. There is not a hundred of judgments. Some days there are larger numbers, some days none at all.

Q. If it was not for your doing the work of certifying searches, the books would not practically be required to be used in your office, would they?

A. They would be constantly required by me and by my clerks.

Q. For what purpose?

A. For the purpose of meeting and attending to the requests of lawyers and all other persons who may wish to refer to judgments or judgment records, which duty is also required, of course, as that of attendance upon the search bureau for these companies.

Q. Are these requests made independently of requests for certificates of search?

A. Yes, sir.

Q. Do you not allow the lawyers to look at the indices themselves, then?

A. All persons are privileged to look and examine the indices and all other records of the court.

Q. Then, what necessity is there for you or your clerks to examine these indices to answer questions to lawyers, who can by looking at the indices know what they want?

34 A. They sometimes, as the very clerks from these search bureaus themselves, call upon the clerks to refer to judgments noted upon their s'arches, in which case the reference is required to be made to the indices.

Q. Do you not have time with intervals, when the index book is not used, to respond to all demands by the three title companies for certificates of search?

A. For the three title companies alone, if there were not other persons.

Q. But you do now have plenty of time to respond to certificates of search from all quarters, do you not?

A. We meet every request that is made for searches, and also meet every request to look out the indices.

Q. And doing this, there are still very considerable intervals of time when the index book is not being used?

A. Very true.

Q. Do you think it would take the title companies' representative any longer to make search in the index book than it takes your clerks to make search?

A. I do think it would take longer, because we could not allow one company to monopolize the book the whole time. The clerks of the courts search continuously until they get the search made up without interruption, but the title companies have no more privilege about it

than any individuals that might come, and they would be liable to interruption.

Q. To the extent that the searching now done by the title companies should be done by them directly, there would be that much less time on the part of your clerks for using the index book; is that not so?

A. Yes, sir.

Q. Are you seriously afraid that the representative of the title company making search would mutilate the book or make entries in it?

A. I have always considered it my duty to keep a watch not only on the indices, but the judgment records, of course. Of course, if I know the individual who is using it, I should feel less fear on matters of this character, but many parties would come with whom I am not acquainted.

Q. At the present time you do not permit anybody representing the title companies to look inside your indices book?

A. I do frequently every day.

Q. For what purpose?

A. For making examinations, which they say is preliminary to the ordering of a search, that they wish to be provided to have a transaction go through that can be executed immediately, or perhaps to give the names to the search bureau and provide the search bureau to send to us for official search and examination.

Q. With the understanding that they shall order a certificate. Is it not for such names to be looked up?

A. Yes, sir.

Q. Practically, the only way in which the title companies can now inform themselves whether or not there are judgments against the properties the title of which they are examining, and for customers, is by ordering certified searches from yourself against the persons involved, is it not?

A. The answer to that depends upon what it wanted. I have always admitted the right to any individual, excepting one desiring to see the records from idle curiosity, to look at the records of judgments and indices of same, when the purpose was to inform himself, or by his deputy to inform him of the extent of the judgment, but not that he should make use of that privilege for the purpose of equipping himself to enter upon the business of issuing searches or certifying judgments, with a view to his individual profit, instead of taking the official search and giving the earnings provided by law to the United States.

Q. Do you permit conveyancers examining titles for their own customers to make searches in your judgment indices?

A. Not if I know that they intend to make that a matter of personal profit, and substitute their individual searches with guarantee, in place of official searches.

Q. Do you permit them at all—conveyancers—to make such searches in your judgment indices?

A. They have done so.

Q. Frequently or very occasionally?

A. They have done it occasionally, when I believed that it was for the purposes I have mentioned. All those making a profit out of the searches I have not allowed to do so.

Q. Suppose that the title companies issued no certificate of search at

all, but simply charged a person who asked them to examine a title for him, to do this work, do you permit them to examine your judgment indices in order that they may perform this duty?

A. I do not, because I do not believe they do the work for nothing, and that they charge a profit in some way.

Q. The title companies very rarely issue certificates of search, do they?

A. I do not know. They issue, I think, their certificates or insurance against judgment, for which they receive compensation, and distribute the compensation money to their stockholders as their profit.

Q. That is, if they make any charge to their customers for the
36 work of examining title and incumbrances, and issue a policy to him stating that the title is good and the property free of incumbrances, you will not permit them to examine your indices?

A. I would not, because I believe that their compensation from such insurance involves also a compensation from having made the search.

Q. Do you think that they could possibly perform their duty to their customer, of examining his title for the purpose of seeing if it was good and free from incumbrances, without inspection of your indices or obtaining from you a certified copy of searches?

A. They have uniformly done so. They have uniformly performed their work, I think, as they believe, too, satisfactorily, by obtaining official searches.

Q. They took official searches from you, did they not, because you would not allow them to look at the indices?

A. They never asked it until recently.

Q. When they did ask, you denied them the right to?

A. I denied them the right, because I thought it was illegal.

Q. And if they had asked the right at any previous time, you would have denied them the right, would you not?

A. If I thought the purpose was to make a profit in any manner from the searches thus made by them.

Q. Even if they made no charge for the searches, but simply a general charge for doing the work of examining into the title and stating the incumbrances, you will still have denied, would you not?

A. I would have denied, because they substitute as a muniment of title their insurance for the official searches.

Q. Colonel Bell and yourself addressed, in reply to communications from the presidents of the title companies, two letters, one given in your answer of 8th June, 1896, and the other given in the bill of 14th July, 1896, did you not?

A. Yes, sir.

Q. These letters were the result of conference on the part of Colonel Bell and yourself, and represented fully your views of the matter and replies to the matter?

A. More fully than stated.

Q. Mr. Lincoln, in your cross-examination Mr. Johnson asked you whether you had serious doubts as to whether or not any representative of the title companies might mutilate any of the books, would you have such a doubt of mutilation or destruction of your books, if access were given to the same by any person, specially a representative of the title companies or the search bureau, who might have made extracts, as stated

in your examination in chief, from the books in both offices, without either your knowledge or consent?

37 A. If a person had made such a use of his examination while the case was pending on this question, as to keep an abstract of the indices, whether I trust such a person? I would not.

PHILADELPHIA, *January 10th, 1899—3.30 p. m.*

Present, Francis H. Bohlen, esq., examiner; John G. Johnson, esq., for complainant; M. F. McCullen, esq., for defendant.

SAMUEL BELL, sworn:

By Mr. MCCULLEN:

Q. You are clerk of the circuit court for this district?

A. I am.

Q. How long have you been such clerk?

A. Since 1870.

Q. What has been the practice of the trust companies of Philadelphia, the conveyancers, and lawyers, and all others ordering searches, prior to the question now in controversy?

A. It has been the practice for them to make application in the office, by giving them the names of persons against whom they wish searches to be made.

Q. And you have made a charge, in accordance with the provisions of the Revised Statutes?

A. Yes, sir.

Q. Prior to the middle of 1896 what was the practice of the Real Estate Title Insurance and Trust Company, the Land Title and Trust Company, and the complainant, the Commonwealth Title Insurance and Trust Company, so far as making searches for the existence or nonexistence of liens and judgments in your court?

A. It was their practice to present us with memoranda of the names against whom they wished searches made, and they were left one day and delivered to them the next day, upon their applying for them the next day.

Q. You have read the bill in equity filed against you?

A. I have.

Q. You have read the prayers for relief?

A. Yes, sir.

Q. If the prayers A and B should be granted, would it be possible for you and your assistant clerks to perform the other duties which you are required to perform by the various acts of Congress?

A. Not without very great difficulty and inconvenience.

38 Q. What would be some of the difficulties and inconveniences that might arise?

A. The difficulties, if those prayers were granted, would be that they would interfere with the examination by our clerks, not only of the searches that have been ordered, but also other inquiries that are made from us in relation to the matters connected with the same things and with the books of the office.

Q. Is it not a fact that at almost every term of the circuit court while jury trials are going on, that at least two of your clerks are required to be, one in Judge Butler's court and the other in Judge Dallas' court?

A. Very frequently. In fact, it is very common, not only during jury trials, but during arguments, when Judge Butler and Judge Dallas are both hearing arguments of cases which are not jury trials.

Q. How many clerks have you now in your employ?

A. I have four, two specially assigned to making searches for judgments and liens.

Q. And yourself and the other clerk, I believe, Mr. Robb, attend to the other duties in the office particularly?

A. Yes, sir.

Q. About what are the annual earnings of your office; that is, the sums collected by you under the fee bill?

A. From individuals?

Q. Yes; and corporations.

A. I am speaking outside of the United States.

Q. I am not asking you as to what earnings may accrue to you as United States commissioner.

A. You mean as clerk of the circuit court. During 1895 and 1896 they averaged about $9,200 or $9,300.

Q. In this office alone?

A. In this office alone.

Q. Is that $9,200 per year?

A. Per annum; yes, sir.

Q. For each of those two years?

A. For each of those two years.

Q. Would the earnings of 1897 and 1898 be about the same?

A. Yes, sir; I think they would. I did not look at them, as this bill was brought in 1896.

Q. What is the average amount received by you as compensation for making searches for liens and judgments and certifying results, per annum, from all quarters?

A. For those two years—I will take 1895 and 1896.

39 Q. If you could give us an average for the last four or five years, that is all we want.

A. About $4,900 per annum.

Q. That is more than one-half of the average fees earned from all sources? The $9,200 include the $4,900?

A. Yes, sir.

Q. While the two courts are in session, upon each of which at least one of your clerks will be in attendance at all times, will it be possible for yourself and the remaining clerks, if access, such as is asked for by this complainant company, be given to it and to all others, to properly discharge all the duties required of you, including the watching of the indices and books and papers in your office?

A. It would not.

Q. Why did you refuse access to this complainant company of the indices and cross indices?

A. Because we thought it would interfere with the collection of fees which are due the United States for making these searches.

Q. Do you get any compensation for making and keeping the indices and cross indices in this office—any direct pay?

A. No, sir; we get no direct pay for anything.

Q. But for making and keeping up the book from day to day?

A. We get no direct pay except what we get for certifying the searches.

Q. You are obliged under the law to keep indices and cross indices in your court?

A. Yes, sir.

Q. You do so?

A. Yes, sir.

Q. Do you get any pay for doing that?

A. No direct pay for doing that.

Q. How many books do you keep containing indices and cross indices?

A. We keep one current book.

Q. There is only one book containing judgments. There may be an old volume, of course?

A. There is only one book containing indices and cross indices.

Cross-examination by Mr. JOHNSON:

Q. I understand that it averaged for the years 1895 and 1896, per annum, $9,300 of total receipts?

A. About $9,200 to $9,300.

Q. Of which $4,900 came from searches?

A. About an average of $4,900 came from searches.

Q. An average of about $4,600 of that $4,900 came from the three title companies, did it not?

A. That I can not tell. We keep no special memorandum. I see no special memorandum of what came from title companies.

Q. Almost all the business of searching comes from them?

A. A large proportion of it does. I think that is entirely too much; you can tell exactly by your checks.

Q. Your book of indices and cross indices is kept in the district court office, is it not?

A. It is kept in the district court office.

Q. And the clerk who has charge of making the searches in the district court indices also makes them in your indices?

A. The clerk who searches makes out the certificates.

Q. Who signs them—that clerk or some other?

A. That clerk signs for me.

Q. So that the same clerk signs for you and for Mr. Lincoln?

A. The same clerks we have.

Q. Then, when he is making a search, he looks almost at the same time at the district court and at the circuit court indices?

A. He can not be looking at the same time. He has to look at one book at one time and at another time at another. That is not the custom. He will search the index for the circuit court and search the index at a different time for the district court.

Q. About how much of his time do you think is occupied during the day in looking into or making entries in your indices book?

A. I think about three hours a day is occupied by each of them—one in making out the certificates and one in making searches.

Q. An hour a day, then, in making the actual searching in the book?

A. Three hours, with the interruptions that he has from time to time.

Q. The office is open from nine until four?

A. Yes, sir.

Q. If forty-six forty-ninths of the work of searching was done by somebody else, there would be a relief to that extent of his use of the book, would there not?

A. If it was done by somebody else, undoubtedly.

Q. Then, if the title companies were to do the searching for themselves to the extent that you do it now for them, the clerk would be relieved?

A. Relieved to a certain extent, undoubtedly.

41 Q. I have now before me the book of current indices running back to 1883. It is a book of about two hundred and fifty pages would not you say?

A. I suppose that is about the size of it.

Q. I see that under the letter A there are two pages and a line; under the letter B there are five pages and a quarter; under the letter C there are seven pages; under the letter D there are two pages and a half; under the letter E one page; under the letter F two pages and a quarter.

A. There are about sixty-seven pages.

Q. For all the alphabet, and that runs back to the year 1881, chronologically arranged?

A. No; it runs back to the year 1883.

Q. About how many entries are made a day, would you say, in this indices book?

A. I can not tell. Some days more, some days less, and some days none at all.

Q. Not an average of more than five a day, do you think?

A. No; not an average of more than five a day.

Q. Does not your clerk have a private book of his own which he uses where the names are arranged alphabetically and subalphabetically?

(Objected to, for the reason that it is irrelevant, the question here being the right of the complainant to have access to the indices and cross indices kept by Colonel Bell under the requirements of the law, and not any private paper or memorandum he may otherwise keep.)

A. No, sir.

Redirect examination by Mr. McCULLEN:

Q. To whom do the earnings of this office belong?

A. All to the United States.

Q. In what way are your fees or your salary paid?

A. Out of the earnings in the office we pay clerk hire, stationery, and out of the balance after paying clerk hire and stationery we are entitled to retain $3,500 for our own compensation. The surplus, after taking out those amounts, is covered into the United States Treasury to the credit of the Treasurer of the United States.

Q. If your emoluments are insufficient to pay your clerk hire, your stationery, and your salary, of course your salary and your clerk hire must be cut down accordingly?

A. I do not know whether the clerk hire would be cut down accordingly, but my own salary would be cut down accordingly.

42 Q. If your earnings by way of fees and emoluments and in making searches and certifying results and doing all the other

duties of your office for which you can get paid would be insufficient to pay your clerk hire and your salary and the cost of your stationery, of course it would have to be cut down to keep within the amount of the earnings?

A. Undoubtedly.

Defendant closes.

EDWARD H. BONSALL, recalled.

By Mr. JOHNSON:

Q. Please give me a statement of the amount paid to the clerks of the United States district and circuit courts for searches by the three title companies, the Commonwealth, Real Estate, and Land Title, in each of the years 1895 and 1896?

A. I had understood that the average given by Mr. Lincoln was for 1896 and 1897. For 1896 and 1897 the average amount paid was $8,642.62.

Q. To the two offices?

A. To the two offices. The average for the previous two years would be a little more, that is for the years 1895 and 1896.

No cross-examination.

JOHN A. BARRY, affirmed.

By Mr. JOHNSON:

Q. What is your business?

A. Title clerk for the Land Title and Trust Company.

Q. You were in the United States district court office and in the United States circuit court office several days under instructions to observe the extent of the use of the judgment indices of those offices, were you not?

A. In the United States district court only.

Q. What indices were kept there?

A. Both the United States district court and circuit court indices are kept there.

Q. I see here two books produced which are, respectively, one the indices of the district court and the other of the circuit court. Those were the books that were there, were they?

A. Yes, sir.

43 Q. What days were you there?

A. I was there on December 29th, 1898, and January 3d, 1899.

Q. Between what hours in each day?

A. On the 29th of December I was there at 9 a. m. and stayed there until 12.20, when I went to lunch, and came back at 12.55 and stayed until 3 p. m.

Q. January 3d, 1899, what hours were you in that office?

A. From 10.30 a. m. until 12.35, and from 1 p. m. until 3 p. m.

Q. Did you observe what use was made of these respective judgment indices of the two courts?

A. Yes, sir.

Q. Were there two clerks who used them, or one?

A. There was only one clerk of the office used them.

Q. Did he make the examination in both sets of books?

A. In both sets.

Q. Do you know his name?

A. Mr. Murphy.

Q. Tell me during what hours on each day those books were used.

A. On the 29th of December Mr. Murphy used the indices from 10.35 to 10.37—two minutes—and from 1.10 to 1.25—fifteen minutes. That was all that day they were used by clerks in the office.

Q. Did you notice their use generally by anybody?

A. They were only used one other time by an outside party.

Q. And for about how long?

A. For twenty minutes.

Q. That constituted the use of those two sets of indices during that day?

A. Yes, sir.

Q. Let us have the tally of use on the 3d.

A. On the 3d of January they were not used at all by any clerk in the office.

Q. And an outside party used them how long?

A. Between 1.40 and 1.45—five minutes.

Q. Was that a room in which there was at all times some clerk engaged in some occupation or other?

A. The clerks were engaged in the office at their desks.

Q. Where were those books kept?

A. They were kept in the safe on the west side of the office, fronting Chestnut street.

Q. Did you observe whether the clerk had some other index of his own that he used?

44 A. I have observed that; yes, sir.

Q. What was this?

A. Mr. Beaver, the search clerk, has an index of his own.

Q. Is it of the district court only, or the circuit court also?

A. I could not say.

Q. So that he used that frequently?

A. He used that in making searches.

Q. I suppose not over frequently, even for that?

A. I did not notice him during my visit.

Cross-examination by Mr. McCULLEN:

Q. How long have you been title clerk in the Land Title and Trust Company?

A. Since October, 1897.

Q. Are these two days you specified, December 29th and January 3d of this year, the only two days that you played detective to ascertain how many times the books would be used by the clerks?

A. They were the only two days I played detective, as you say.

AUSTIN R. CADWALLADER, sworn.

By Mr. JOHNSON:

Q. What is your business?

A. I have been connected with the companies, in charge of their bureau.

Q. The search bureau?

A. The search bureau.

Q. How long?

A. I have been connected with them for eight years and three-quarters, and have had charge of it for three years.

Q. As such have you become familiar with the amount of searching that is done by the three companies or for the three companies?

A. I am.

Q. And also with the length of time that it would require to make the searches?

A. Yes, sir.

Q. Do you know anything at all about the indices of United States district and United States circuit courts?

A. The construction of the book?

45 Q. Or the volume of them?

A. Yes, sir.

Q. I wish you would tell us how long it would take in each day to make all the searches that are required for those three companies in both judgment indices.

A. Sixty minutes.

Q. Would that be amply sufficient?

A. Fully.

No cross-examination.

WILLIAM SMITH, sworn:

By Mr. JOHNSON:

Q. What is your business?

A. I am search clerk for the Land Title Company.

Q. Are you familiar with the amount of searching done by the three companies, the Commonwealth, Land Title, and Real Estate?

A. I understand that it is about the rate of one hundred and forty names a day on an average.

Q. Are you familiar with the general makeup of the indices in the district and circuit courts?

A. Yes, sir.

Q. Tell us how long a time it would require to make all the searches for those three companies in both sets of indices each day.

A. I think that with the names arranged in the order in which we generally arrange them I could do it inside of an hour, or very little over.

Cross-examination by Mr. MCCULLEN:

Q. By that you mean if you had a steady hour, do you not?

A. Yes, sir; if they were arranged in a certain order—the names themselves—I think I could do it in an hour.

Q. You mean in you slip?

A. On my slip.

Q. Say you had them arranged in that manner on your own slip; are you sure you could have the use of the indices and cross indices for a straight hour every day without being interrupted by conveyancers, lawyers, and others who have the right to use those books, including the clerks of the court?

A. As a rule I have not been interrupted in my work. Of course, I have not searched straight ahead for longer than half an hour or forty-five minutes.

46 Q. How many times have you examined the indices a straight half hour without being interrupted, about on an average, taking a week or a month?

A. I do not know as I could say that. I know there have been several times I have done it.

Q. Did you not frequently call on the clerk to explain and ask for information regarding judgments?

A. I have asked him several times in cases in which judgments turned up on their searches.

Q. Is that work and labor ever paid for?

A. It did not amount to very much labor, except in one or two cases. I generally do it myself. I ask him which book to look in, and I look in the book.

Q. After the search bureau would obtain the searches and they would be certified by the clerk, and so on, in cases where judgments did exist, was it not the invariable rule of some servant of either the trust companies or the search bureau itself, to come to the clerk and ask him to explain or show that judgment on the other dockets and other papers?

A. Each company, in the case of United States judgment, explain their own searches, and in the matter of the courts, at the first beginning, which was probably a year or so altogether, I ask for them quite awhile to explain the matter to me. After I understood them I did not trouble them much.

Q. Do you mean to say the search bureau has not in the past year, 1898, through its employees, or the employees of the companies individually, always asked aid and help of the clerk in explaining judgments?

A. I say I have as a general thing looked at them myself, but I have on several occasions asked them in cases where I wanted to find the address. That was the particular thing I asked them about.

Q. Did you ever see any lawyers or conveyancers asking similar information?

A. I do not recall exactly that I have. I suppose probably I have.

Q. Do you mean to say that you can make searches for the three companies for five years past in both of the courts within an hour each day?

A. I say I think I could.

Q. That is, if you were not interrupted?

A. I think I could.

47 Redirect examination by Mr. JOHNSON:

Q. You have been making searches in the common pleas, have you not?

A. Yes, sir.

Q. Those indices compare with these indices how?

A. These are exceedingly small compared with them.

Q. How long does it take to make all the searches for names in the common pleas, with its numerous indices?

A. Almost any one of the books of the common pleas is as big as any one of these.

Q. How many of them are there?

A. There is one for each letter in the alphabet, and for some letters there are two.

Q. How long does it take you to make your searches for the companies in the common pleas indices?

A. I do not know. It would be pretty hard to say. I have no means of determining that.

Q. Have you not been making them?

A. I will state that I do not make the full searches in the common pleas for our company. They are made by the bureau.

Recross-examination by Mr. McCULLEN:

Q. Made by whom?

A. Made by the bureau.

Q. Is it not the fact that one of the clerks in the prothonotary's office furnishes the bureau with information every day of the entry of judgments?

A. No, sir.

Q. Furnishes the information to the search bureau or to those companies?

A. I want to understand you thoroughly before I answer. There is a clerk of ours who is there all the time. He is employed by our company. He keeps the records.

Q. As they are made; the moment a judgment is entered on the indices he copies it?

A. That is right.

Q. Through the permission of the clerks of the prothonotary's office?

A. I do not know anything about that. I have no means of knowing. I suppose it would not be done if it was not with their permission.

48 Q. There is a book for every letter of the alphabet except the last three, probably—X, Y, Z—in the prothonotary's office. For M, and probably W, there are two books?

A. Yes, sir; and B, C, H, and letters like that there are two books.

Q. In your opinion, does that manner of keeping indices and cross indices facilitate the looking up of judgments generally, or not?

A. I think it does; very much so in comparison to their amount of business.

Q. In comparison to the way the indices are kept here?

A. Yes, sir; I think it facilitates it very much.

Q. In what way?

A. Because, for instance, all the A of B are together, and all of the B of B are together, and you merely run your name down.

Q. In other words, is it not a fact that if you have A to look up—a judgment against a man whose name commences with A—and that book is used by somebody else, and you want to examine another judgment against a man whose name commences with B, you can take the B book while the A book is used by somebody else?

A. Yes, sir.

Q. Can you do that here in the circuit or district court?

A. No; but they are generally not using both books at the same time.

I had a case to-day. I came in here and Mr. Murphy was using one book and I used the other.

Q. That is as to another court, though.

A. Yes; as to this court. I used the district-court index in Mr. Lincoln's room. When I came in Mr. Murphy was recording judgments in the circuit index.

Q. Suppose that a man was using the circuit index, looking up some particular letters of the alphabet—any of them from A to Z—and you wanted to look up some, would you not have to wait until he was through unless he gave way to you?

A. Yes, sir.

Q. Suppose the clerk was looking up names, would you not have to wait?

A. Yes, sir.

Q. In the prothonotary's office the clerks use their indices for certifying searches, do they not?

A. Yes, sir.

Q. While they are using one book, which you would also wish to use, if you had other books you wanted to look at you could look at the other books while the clerk there is using one?

40 A. Yes, sir; the same as I do here. I would have two books to look at.

Q. Suppose you wanted to look at the very book some other person was using?

A. I would have to wait until he got through.

By Mr. JOHNSON:

Q. It would not be more than an hour of looking in the books, but you might have to wait to get that hour?

A. Yes, sir.

Q. You would expect if somebody else was using the book that you would not get your fingers on it until he got through?

A. No, sir; I generally have to wait until he gets through.

Respectfully submitted.

FRANCIS H. BOHLEN,
Examiner.

And afterwards, to wit, on the 14th day of November, 1900, come the parties aforesaid, by their counsel aforesaid, and this cause being called for argument sur pleadings and proofs, and after being argued by counsel for the respective parties, and the court not being fully advised in the premises, takes further time for the consideration of the same.

And afterwards, to wit, on the 3d day of January, 1901, come the parties aforesaid, by their counsel aforesaid, and the court being fully advised in the premises, renders the following opinion, viz:

In the circuit court of the United States for the eastern district of Pennsylvania.

THE COMMONWEALTH TITLE INSURANCE AND Trust Company
vs.
SAMUEL BELL, ESQ., CLERK OF THE CIRCUIT court of the United States for the eastern district of Pennsylvania.

Dallas, circuit judge:

A decree may be prepared and submitted, ordering the defendant to permit properly authorized representatives of the plaintiff to
50 inspect and examine the judgment indices and cross indices kept by the defendant as clerk of this court, in such way and manner as will enable the plaintiff to prosecute its business as an insurer of titles, but subject to the following restrictions, to wit:

1. The inspection and examination must in each instance relate and be confined to a transaction or transactions which at the time being shall be current or depending.

2. They shall be made only at such times and under such circumstances as will not interfere with the clerk or his assistants in the discharge of their duties or with the exercise of the right of any other person or persons to have access to said indices and cross indices.

McPheron, district judge, dissents.

(Endorsed:) 31 Oct., 1896. Commonwealth Co. vs. Bell. Opinion granting permission to examine indices. Filed January 3rd, 1901. Samuel Bell, clerk.

THE COMMONWEALTH TITLE INSURANCE AND Trust Company
vs.
SAMUEL BELL, CLERK.
Oct., 1896. No. 51.

Decree.

Before Dallas, Cir. J.:

And now this sixteenth day of January, 1901, this case having come on to be heard upon pleadings and proofs, and having been argued by counsel, it is ordered, decreed, and adjudged that the respondent shall permit the properly authorized representatives of the complainant to inspect and examine the judgment indices and cross indices kept by the respondent, as clerk of the circuit court of the United States for the eastern district of Pennsylvania, in such way and manner as will enable the complainant to prosecute its business as insurer of titles, but subject to the following restrictions:

1. The inspection and examination must in each instance relate and be confined to a transaction or transactions which at the time being shall be current or depending; and

2. Such inspection and examination shall be made only at such times and under such circumstances as will not interfere with the respond-
51 ent or his assistants in the discharge of their duties or with the exercise of the right of other persons to have access to said indices and cross indices.

BY THE COURT.

(Endorsed:) No. 51, Oct. sess., 1896. Commonwealth Title Co. vs. Bell. Decree. Filed January 17th, 1901. Samuel Bell, clerk.

In the circuit court of the United States for the eastern district of Pennsylvania.

THE COMMONWEALTH TITLE INSURANCE AND Trust Company *vs.* SAMUEL BELL, CLERK OF THE CIRCUIT COURT of the United States for the eastern district of Pennsylvania.	October term, 1896. No. 51. In equity.

Petition for appeal and assignments of error.

The above-named respondent, Samuel Bell, believing himself to be aggrieved by the decree entered in the above-named cause on the seventeenth day of January, A. D. 1901, in the circuit court of the United States for the eastern district of Pennsylvania, hereby appeals from the said decree, and assigns the following errors:

1. The learned court erred in not dismissing the complainant's bill of complaint.

2. The learned court erred in directing that a decree be entered in favor of the complainant.

3. The learned court erred in directing that the following decree be entered:

And now, this sixteenth day of January, 1901, this case having come on to be heard upon pleadings and proofs, and having been argued by counsel, it is ordered, decreed, and adjudged that the respondent shall permit the properly authorized representatives of the complainant to inspect and examine the judgment indices and cross indices kept by the respondent, as clerk of the circuit court of the United States for
52 the eastern district of Pennsylvania in such way and manner as will enable the complainant to prosecute its business as insurer of titles, but subject to the following restrictions:

1. The inspection and examination must in each instance relate and be confined to a transaction or transactions which at the time being shall be current or depending; and

2. Such inspection and examination shall be made only at such times and under such circumstances as will not interfere with the respondent or his assistants in the discharge of their duties or with the exercise of the right of other persons to have access to said indices and cross indices.

The said respondent prays that this, his appeal, may be allowed, and that a transcript of said decree and of the record and proceedings and papers upon which said decree was made, duly authenticated, may be

transmitted to the United States circuit court of appeals for the third circuit.

And he will ever pray.

JAMES B. HOLLAND,
United States Attorney, Attorney for Respondent.

Allowed.

BY THE COURT.

(Endorsed:) No. 51, Oct., 1896. The Commonwealth Title Co. vs. Bell, clerk. Petition for appeals and assignments of error. Filed Jan'y 25th, 1901. Samuel Bell, clerk.

UNITED STATES OF AMERICA, ss.

The President of the United States to the Commonwealth Title Insurance & Trust Company, greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the third circuit, to be holden at the city of Philadelphia within thirty days, pursuant to an appeal filed in the clerk's office of the circuit court of the United States, eastern district of Pennsylvania, wherein Samuel Bell, clerk, is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

53 Witness, the honorable George M. Dallas, judge of the circuit court of the United States, this 25th day of January, in the year of our Lord one thousand nine hundred and one.

GEO. M. DALLAS, *Cir. Judge.*

Service accepted.

JOHN G. JOHNSON.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of the Commonwealth Title Insurance and Trust Company vs. Samuel Bell, clerk, No. 51, Oct. sess., 1896, in equity, on file, and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twelfth day of February, in the year of our Lord one thousand nine hundred and one, and of the independence of the United States the one hundred and twenty-fifth.

SAMUEL BELL, *Clerk of C. C.*

54 And afterwards, to wit, on the eighteenth day of March, A. D. 1901, this cause being called for argument on the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania, before Hon. M. W. Acheson and Hon. George Gray, circuit judges, and Hon. Joseph Buffington, district judge, and being argued

by counsel for the respective parties, and the court not being fully advised in the premises, takes further time for consideration thereof.

And afterwards, to wit, on the twenty-seventh day of September, A. D. 1901, comes the parties aforesaid by their counsel aforesaid, and the court now being fully advised in the premises, renders the following opinion, to wit:

In the United States circuit court of appeals for the third circuit.

SAMUEL BELL, APPELLANT,
vs.
THE COMMONWEALTH TITLE INSURANCE and Trust Company, appellee.

Appeal from the circuit court of the United States for the eastern district of Pennsylvania.

Before Acheson and Gray, circuit judges, and Buffington, district judge.

ACHESON, Circuit Judge.

This is an appeal by Samuel Bell, clerk of the circuit court of the United States for the eastern district of Pennsylvania, the respondent below, from a decree of that court of which the following is a copy:

55 "And now this sixteenth day of January, 1901, this case having come on to be heard upon pleadings and proofs, and having been argued by counsel, it is ordered, decreed, and adjudged that the respondent shall permit the properly authorized representatives of the complainant to inspect and examine the judgment indices and cross indices kept by the respondent, as clerk of the circuit court of the United States for the eastern district of Pennsylvania, in such way and manner as will enable the complainant to prosecute its business as insurer of titles, but subject to the following restrictions:

"1. The inspection and examination must in each instance relate and be confined to a transaction or transactions which at the time being shall be current or depending; and

"2. Such inspection and examination shall be made only at such times and under such circumstances as will not interfere with the respondent or his assistants in the discharge of their duties or with the exercise of the right of other persons to have access to said indices and cross indices."

The Commonwealth Title Insurance and Trust Company, the complainant below (here the appellee), is lawfully engaged in the business of insuring titles to real estate; in making searches for liens and incumbrances against the same; in giving certificates as to the condition of such real estate as regards the existence of liens against the same; and in doing, on behalf of persons contemplating purchases of real estate, all that is necessary in the way of examination of the titles thereof and for liens and incumbrances against the same.

Section 828 of the United States Revised Statutes provides:

"All books in the offices of the clerks of the circuit and district courts, containing the docket or minute of the judgments or decrees
56 thereof shall, during office hours, be open to the inspection of any person desiring to examine the same, without any fees or charge therefor."

The act of Congress of August 1, 1888 (25 Statutes at Large, 357;

Supplement to R. S., vol. 1, 2nd ed., page 602), after enacting that judgments and decrees rendered in a circuit or district court of the United States within any State shall be liens on property throughout such State, in the same manner and to the same extent, and under the same conditions as if they had been rendered by a court of general jurisdiction of such State, provides thus:

"SEC. 2. That the clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross indices of the judgment records of said courts; and such indices and records shall at all times be open to the inspection and examination of the public."

This legislation, we think, was a complete warrant for the measure of relief accorded to the complainant below. We do not regard it as at all material that the words "without any fees or charge therefor" are not repeated in the act of 1888. The two cited enactments relate to the same general subject-matter and are to be read together. Besides, the language "such indices and records shall at all times be open to the inspection and examination of the public," clearly implies free access for the purpose stated. The reason is obvious, for by the first section of the act of 1888 judgments and decrees rendered by a circuit or district court of the United States within any State are made liens on property throughout the State, in the same manner and to the same extent,
57 and under the same conditions as if rendered by a court of general jurisdiction of the State. Under this act and within its limitations every judgment or money decree rendered in a circuit or district court of the United States within the State of Pennsylvania is a lien upon the real estate of the defendant in such judgment or decree, and every one purchasing real estate which might be affected by the act of Congress for his protection must examine or cause to be examined the indices and cross indices required by the act to be kept by the clerk of the court. Undoubtedly the right of inspection and examination of these indices is given to such purchasers by the statute. The purchaser or intending purchaser of real estate, however, is not bound to exercise this right personally, but may do so by an agent, or through a skilled person or an experienced company, such as an attorney at law or a title insurance company. In the present case the decree secures the right of inspection and examination to a title insurance company in the prosecution of a legitimate business and when acting in the interest of its customers. We can not doubt that under the act of Congress these indices and cross indices are open for inspection and examination to this title insurance company as part of the public.

The decree of the court below, it will be perceived, is very guarded in its terms. Under it the title insurance company, the appellee, has no general access to the judgment indices and cross indices, but simply the right of inspection and examination in a particular transaction or transactions at the time current or depending; and this restricted right is to be so exercised as not to interfere with the clerk or his assistants in the discharge of their duties or with the right of other persons to have access to the indices.

58 The right of inspection and examination of the judgment indices expressly conferred by the act of Congress is not to be denied

because its exercise may diminish the income of the clerk's office. No one who is entitled by law to inspect and examine these indices is to be compelled to order and pay office fees for certificates of search. If the revenue of the office is insufficient, the remedy is with Congress.

No good reason for disturbing the decree of the circuit court has been shown to us.

The decree is affirmed.

(Endorsed:) Samuel Bell, appellant, vs. The Commonwealth Title Insurance and Trust Company, appellee. Opinion of the court. Acheson, circuit judge. Filed September 27, 1901. Wm. H. Merrick, clerk.

United States circuit court of appeals for the third circuit.

SAMUEL BELL, CLERK OF THE CIRCUIT COURT of the United States for the eastern district of Pennsylvania, appellant, *vs.* THE COMMONWEALTH TITLE INSURANCE AND Trust Company, appellee.	No. 31. March term, 1901.

Appeal from the circuit court of the United States for the eastern district of Pennsylvania.

Per CURIAM:

This cause came on to be heard on the transcript of record from
59 the circuit court of the United States for the eastern district of Pennsylvania, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed.

M. W. ACHESON, *Circuit Judge.*

(Endorsed:) No. 31. March term, 1901. Order affirming decree of circuit court. Entered and filed September 30, 1901. Wm. H. Merrick, clerk.

In the United States circuit court of appeals for the third circuit.

SAMUEL BELL, CLERK OF THE CIRCUIT COURT of the United States for the eastern district of Pennsylvania, appellant, *vs.* THE COMMONWEALTH TITLE INSURANCE AND Trust Company, appellee.	No. 31. March term, 1901.

Appeal from the circuit court of the United States for the eastern district of Pennsylvania.

And now, to wit, this 28th day of October, A. D. 1901, it is ordered that mandate issue to the said circuit court of the United States for the eastern district of Pennsylvania in accordance with the opinion and decree of this court in said cause.

Approved.

GEO. GRAY, *C. J.*

(Endorsed:) No. 31. March term, 1901. Order for mandate to issue. Entered and filed October 28, 1901. Wm. H. Merrick, clerk.

60 UNITED STATES OF AMERICA, ss.

[SEAL.]

The President of the United States of America to the honorable the judges of the circuit court of the United States for the eastern district of Pennsylvania, greeting:

Whereas lately in the circuit court of the United States for the eastern district of Pennsylvania, before you, or some of you, in a cause between Samuel Bell, esq., clerk of the circuit court of the United States for the eastern district of Pennsylvania, appellant, and The Commonwealth Title Insurance and Trust Company, a corporation of the State of Pennsylvania and a resident in said State, having its principal office located in the city of Philadelphia, appellee, wherein the decree of the said circuit court entered in said cause is in the following words, viz:

"And now, this sixteenth day of January, 1901, this cause having come on to be heard upon pleadings and proofs and having been argued by counsel, it is ordered, decreed, and adjudged that the respondent shall permit the properly authorized representatives of the complainant to inspect and examine the judgment indices and cross indices kept by the respondent as clerk of the circuit court of the United States for the eastern district of Pennsylvania in such way and manner as will enable the complainant to prosecute its business as insurer of titles, but subject to the following restrictions:

"1. The inspection and examination must in each instance relate and be confined to a transaction or transactions which at the time being shall be current or depending; and

"2. Such inspection and examination shall be made only at such times and under such circumstances as will not interfere with the respondent or his assistants in the discharge of their duties or with the exercise of the right of other persons to have access to said indices

61 and cross indices," as, by the inspection of the transcript of the record of the said circuit court, which was brought into the United States circuit court of appeals for the third circuit by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

62 And whereas in the present term of March, in the year of our Lord one thousand nine hundred and one, the said cause came on to be heard before the said United States circuit court of appeals on the said transcript of record, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed.

Philadelphia, September 30, 1901.

63 You, therefore, are hereby commanded that such proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 28th day of October, in the year of our Lord one thousand nine hundred and one.

WM. H. MERRICK,

Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

(Endorsed:) U. S. circuit court of appeals, third circuit. No. 31. March term, 1901. Samuel Bell, clerk, etc., appellant, vs. Commonwealth Title Insurance and Trust Co., appellee. Mandate.

64 UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, ss.:

I, William H. Merrick, clerk of the United States circuit court of appeals for the third circuit, do hereby certify that the foregoing pages, from one to sixty-three, inclusive, to contain a full, true, complete, and faithful copy of the original transcript of record and proceedings in the case of Samuel Bell, esq., clerk of the circuit court of the United States for the eastern district of Pennsylvania, appellant, and The Commonwealth Title Insurance and Trust Company, appellee, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this eleventh day of November, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-sixth.

[SEAL.] WM. H. MERRICK,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

65 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the third circuit, greeting:

Being informed that there is now pending before you a suit in which Samuel Bell, clerk, is appellant, and The Commonwealth Title Insurance & Trust Company is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the eastern district of Pennsylvania and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals
66 and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the second day of December, in the year of our Lord one thousand nine hundred and one.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

67 (Indorsed:) File No., 18316, Supreme Court of the United States. No. 463, October term, 1901. Samuel Bell, clerk, vs. The Commonwealth Title Ins. & Trust Co. Writ of certiorari.

68 In the Supreme Court of the United States. October term, 1901.

SAMUEL BELL, PETITIONER,
v.
THE COMMONWEALTH TITLE INSURANCE & Trust Company. } No. 463.

Stipulation.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record and proceedings in the circuit court of appeals for the third circuit, now on file in the Supreme Court of the United States, may be taken as the return of the clerk of the circuit court of appeals to the writ of certiorari issued herein.

December 9, 1901.

J. K. RICHARDS,
Solicitor-General.
JOHN G. JOHNSON,
Counsel for the Respondent.

69 UNITED STATES OF AMERICA, SCT.:

I, William H. Merrick, clerk of the United States circuit court of appeals for the third circuit, by virtue of the foregoing writ of certiorari and in obedience thereto do hereby certify to the Supreme Court of the United States the consent of the counsel for the respective parties thereto annexed as my return to the said writ.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this eleventh day of December, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-sixth.

[SEAL.] WM. H. MERRICK,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

(Indorsed:) No. 34. March term, 1901. United States circuit court of appeals, third circuit. Samuel Bell, clerk, appellant, vs. The Commonwealth Title Insurance & Trust Company, appellee. Certified copy. Office Supreme Court of U. S. Received Dec. 13, 1901.

70 (Indorsed:) File No., 18316, Supreme Court U. S. October term, 1891. Term No., 463. Samuel Bell, petitioner, vs. The Commonwealth Title Ins. and Trust Company. Writ of certiorari and return. Filed Dec. 13, 1901.

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FILED
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JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, ~~1901~~, 1902.

SAMUEL BELL, PETITIONER,
v.
THE COMMONWEALTH TITLE INSURANCE and Trust Company. } No. ~~162~~ 191.

PETITION FOR WRIT OF CERTIORARI.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

SAMUEL BELL, PETITIONER,
v.
THE COMMONWEALTH TITLE INSURANCE and Trust Company. } No. ——.

PETITION FOR WRIT OF CERTIORARI.

Comes now the Solicitor-General, on behalf of the United States, and respectfully shows to this court as follows:

First. On December 28, 1896, a bill in equity was filed by The Commonwealth Title and Trust Company against the petitioner, Samuel Bell, clerk of the circuit court of the United States for the eastern district of Pennsylvania, alleging, inter alia, that "said company is engaged in the business of insuring titles to real estate, in making searches for liens and encumbrances against the same; *in giving certificates as to the condition* of such real estate as regards the existence of liens against the same in any of the courts of the Commonwealth, including the courts of the United States."

That "it is impossible for complainant to insure titles safely or to examine into or to certify to its

customers the condition of the titles or to the amount of encumbrance against the properties they desire to acquire, without searches of indices and cross indices of the judgment records so kept by said court."

The prayer of said bill was for a decree, directing the petitioner as clerk of the circuit court to permit the properly authorized representative of complainant "to have access to the judgment indices and cross indices kept by him in such way and manner as *will enable the plaintiff to prosecute its business as an insurer of titles* and investigator of encumbrances against properties in the city of Philadelphia."

Second. A demurrer was filed to this bill on October 20, 1896, which the court, Dallas, J., overruled with leave to answer. Subsequently an answer was filed and testimony taken on July 10, 1899. The cause was argued before Judge McPherson on pleadings and proof. Later a reargument was ordered, and on November 14, 1900, such reargument was had before Judges Dallas and McPherson, and on January 3, 1901, Judge Dallas filed an opinion granting the prayer of complainant, Judge McPherson dissenting. On June 17, 1901, the following decree was entered: "And now, this 16th day of January, 1901, this case having come on to be heard upon pleadings and proofs, and having been argued by counsel, it is ordered, decreed, and adjudged that the respondent shall permit the properly authorized representatives of the complainant to inspect and examine the judgment indices and cross indices kept by the respondent as clerk of the circuit court of the United States for the

eastern district of Pennsylvania in such way and manner as will enable the complainant *to prosecute its business as an insurer of titles* and subject to the following restrictions:

1. The inspection and examination must in each instance relate and be confined to a transaction or transactions which at the time being shall be current or depending; and

2. Such inspection and examination shall be made only at such times and under such circumstances as will not interfere with the respondent or his assistants in the discharge of their duties or with the exercise of the right of other persons to have access to said indices and cross indices.

Third. An appeal was taken from the above decree to the circuit court of appeals for the third circuit, and on March 18, 1901, the cause was argued before Judges Acheson, Gray, and Buffington, and on September 27, 1901, Judge Acheson filed an opinion affirming the decree entered by Judge Dallas.

Fourth. The principal point relied upon by your petitioner in support of his said appeal was that the learned judge failed to recognize the distinction between the right of an individual to examine the indices and cross indices in a matter in which he is personally interested and the right of a corporation organized for profit to make such examination with a view subsequently to use the information thus obtained for the private gain of such corporation by issuing guaranteed

certificates of search to take the place of searches provided for by the act of Congress, and thus deprive the United States of the fees resulting therefrom.

Fifth. Your petitioner is advised, believes, and therefore avers, that the said opinion of the circuit court of appeals and judgment passed thereon are erroneous, and should be reviewed by this court for the following reasons:

(*a*) The learned court failed to recognize the practical effect of a decree which permits a title company to issue for private gain a certificate in which they guarantee against any liens on specific property in the courts of the United States, thereby substituting a search of a private corporation for the searches provided for by law, and depriving the clerks of the courts of the United States of the revenue expressly given them for such work, thus practically annulling the fee bill provided for in the same statute.

(*b*) The provision of the act of August 1, 1888 (25 Stat. L., 357), that "The clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public," is to be construed in the light of the common law rules relating to the public inspection of records; that this right does not extend to one seeking to examine the same for his own private gain and to the detriment of the United States. It is to be noted that it is not the purchaser or the person about to make a loan that

is asking the right of inspection, but a corporation engaged in the business of issuing certificates as to the existence of liens in the courts of the United States. These companies have, in the past, been able to certify to the existence of such liens after they have secured a regular search from the clerks and paid for the same, and have been able to make money out of their business, but they now claim the right to examine the indices and make copies of the same, from which they can issue a certificate of search to take the place of that granted by the clerk and thus, under a provision granting the right of inspection, take away fees given by the same act to the United States for this service.

(*c*) The decisions in the following States have declared it to be the law that such corporations shall not be allowed to abstract records for profit in their private business without paying the usual compensation to the clerks:

Colorado: *Bean* v. *People*, 7 Col., 200.

Georgia: *Buck* v. *Collins*, 51 Ga., 391; *Land Title* v. *Tanner*, 99 Ga., 470.

Alabama: *Phelan* v. *State*, 76 Ala., 51.

Kansas: *Cormack* v. *Wolcott*, 37 Kans., 391.

Virginia: *Keller* v. *Stone*, 96 Va., 667.

North Carolina: *Newton* v. *Fisher*, 98 N. C., 20.

Maryland: *Belt* v. *Abstract Co.*, 20 Atl. Rep., 982.

Pennsylvania: *Commonwealth* v. *Passenger Railway Co.*, 134 Pa., 239.

(*d*) On November 25, 1885, Hon. A. H. Garland, the then Attorney-General, wrote a letter to the

United States attorney at Indianapolis, wherein he states as follows: "The Government must retain its right to its own fees. By its fee bill it has fixed a charge against all persons who ask for searches for information within the exclusive control of the Government's officer. By the collection of these and other fees, the Government is enabled to pay its officers and forbids the practice of any private ingenuity to deprive the Government of its right to these fees as an injury to the Government which must be enjoined." Acting upon that letter, the United States attorney for the district of Indiana filed a bill asking for orders restraining unauthorized persons from using the indices in the case of *United States* v. *Anderson* This case was heard before Judge Walter Q. Gresham, and, after a full hearing, decided in favor of the United States.

(*e*) In this particular district the hardship of this decision is seen from the evidence in the case, where it appears that the receipts of the clerks' offices from the searches given such title companies amount to nearly 50 per cent of the whole receipts of the office, and the consequent loss under the decree of the court will be such that the revenues from all sources will not be sufficient to pay the clerks for their work, a great part of which is the preparation of the records and the entry of proceedings from which these very indices are made. How far this will affect the fees and receipts of other districts is not known, but this decision will certainly deprive the clerks in each of the circuit and district courts of the United States

of the fees expressly provided by Congress, for it will enable these companies, for their own private gain, to substitute, after an examination of the indices, a search of their own. This result was never contemplated by Congress when it provided for an individual the right to examine an index to see how far it affected him personally. While there is not a conflict between two circuit courts of appeal, it is submitted that there was a dissenting opinion in the circuit court in this case, and the contrary opinion of Judge Gresham in the circuit court of Indiana. As the case affects the rights of the clerks in each and every district and circuit court of the United States, it is submitted that the question is one of sufficient gravity to warrant its being passed upon by this court.

Wherefore, your petitioner prays that this honorable court may be pleased to grant a writ of certiorari to said circuit court of appeals for the third circuit to bring up this case for its review and determination, and for such other and further proceedings as it may direct.

JOHN K. RICHARDS,
Solicitor-General.

JAMES M. BECK,
Assistant Attorney-General.

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Office Supreme Court U. S.
FILED
NOV 25 1901
JAMES H. McKENNEY,
Clerk.

No. 463. 1901

(By. of Atty. Gen. Pickards
(Beck) for Petitioner

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Nov. 25, 1901.

SAMUEL BELL, PETITIONER,
v.
THE COMMONWEALTH TITLE INSURANCE and Trust Company. } No. 463.

PETITION FOR WRIT OF CERTIORARI.

BRIEF ON BEHALF OF PETITIONER.

JOHN K. RICHARDS,
Solicitor-General.
JAMES M. BECK,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

SAMUEL BELL, PETITIONER,
v.
THE COMMONWEALTH TITLE INSURANCE and Trust Company. } No. ——.

PETITION FOR WRIT OF CERTIORARI.

BRIEF ON BEHALF OF PETITIONER.

This application presents a question of some importance to the revenues of the Government. It is, moreover, a question about which, under similar laws, both the Federal courts and the courts of the various States have differed widely in their conclusion, and it is desirable that, so far as the Federal courts are concerned, there should be a final conclusion.

The question, in brief, is the right of a corporation engaged in the business of insuring titles to real estate to have access to the records of the court for the purpose of selling the information thus acquired for profit. They claim the right to thus divert the revenues of the Government and to discharge the duties of the clerks of the courts under the following acts of Congress:

Section 828 of Revised Statutes is, as the court will remember, the clerks' fee bill.

Section 823 declares that "the following, and no other, compensation shall be taxed and allowed to attorneys, * * * clerks of the circuit and district courts, marshals, etc., * * * except in cases otherwise expressly provided by law." Sections 824 to 827 have reference to the fees of attorneys, solicitors, and proctors; and section 828 has reference specifically to clerks' fees. Among the specific services for which the clerks are given fees, they are allowed:

> *For every search of any particular mortgage, judgment, or other lien, fifteen cents.*
>
> *For searching the records of the court for judgments, decrees, or other instruments constituting a general lien on real estate, and certifying the result of such search, fifteen cents for each person against whom such search is required to be made.*

Then, after two other provisions for their compensation, it is provided:

> *All books in the office of the clerk of the circuit and district courts, containing the docket or minute of the judgments, or decrees thereof, shall, during office hours, be open to the inspection of any person desiring to examine the same, without any fees or charge therefor.* (Section 828, Revised Statutes)

It is to be noted that not all the books are to be open for inspection, but only those books which contain "the docket or minute of the judgments or decrees" of the courts. The indices are not "the docket or minute of the judgments or decrees," and it follows that they are not among the books which the clerks are required by this section to keep open for inspection. The judgment indices are, properly speaking, only the

books by which reference may be made to the particular judgments appearing in the dockets and minutes; the indices are merely the lists, or catalogues, as it were, of the judgments appearing in the several dockets.

Section 828, as we have seen, provides that the books "containing the docket or minute of the judgments or decrees" shall be open to inspection "without any fees or charge therefor." The reason for this provision is obvious. The particular litigant should be allowed access free of charge to the docket exhibiting the judgment in his favor or against him. Nay, more, the public as well as the litigant in a particular case are directly interested in knowing what the judgment or decree of the court has been. As regards the indices, however, the rule would reasonably be different. They are kept primarily for the benefit of the clerk and only secondarily for the benefit of the public. They are especially part of the working plant of the clerk's office, and they form the means by which he makes the searches for which he is allowed compensation in the fee bill. There was, consequently, good reason for a different rule as to the inspection of the indices, and when in 1888 Congress came to provide specifically for them it was only natural that it should omit in the later legislation the words "without any fees or charge therefor."

The act of 1888 provides, first, that judgments and decrees rendered in a circuit or district court of the United States shall be liens upon property throughout such State, in the same manner, etc., as if such

judgments and decrees had been rendered by a court of general jurisdiction of such State; and, secondly, "*that the clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross indices of the judgment records of said court; and such indices and records shall at all times be open to the inspection and examination of the public.*" Act of August 1, 1888, section 2 (25 Stat. L., 357).

The words "*without any fees or charge therefor*" are nowhere to be found.

The complainant must found his case upon a statutory right. If there can be said to have been any rule of common law upon the subject, it was that the right to inspect public records was confined to a person having some direct interest in the particular record sought to be inspected or copied, and that the right did not extend to one seeking to do so from mere curiosity or for his own private gain.

1 Greenl. Ev., 473, 475.
Hanson v. *Eichstædt*, 35 N. W. Rep., 31.
State et rel., etc., v. *Rashac*, 35 N. W. Rep., 7.
Cormac v. *Wolcott*, 15 Pac. Rep., 245.

In *Brewer* v. *Watson*, where no statute was relied upon, the court stated the rule as follows:

> The individual demanding access to and inspection of public writings must not only have an interest in the matters to which they relate, a direct, tangible interest, but the inspection must be sought for some specific and legitimate purpose. The gratification of mere curiosity,

or motives merely speculative, will not entitle him to demand an examination of such writings. (1 Wharton on Ev., 745; *King* v. *Merchant Tailors' Co.*, 2 Barn. & Ad., 115; *King* v. *Justices Stafford and Shire*, 6 Ad. & Ellis, 84; *Ex parte Briggs*, 1 Ell. & Ell., 881 (102 Com. Law, 879); *People* v. *Walker*, 9 Mich., 328; *Brewer* v. *Watson*, 71 Ala., 305, 1882.)

The question, therefore, is one entirely of statutory construction, and in determining the complainant's rights the fee bill and the other provisions of the law must be read together. Congress has said that the indices shall be open to inspection, but it has also said that the clerks of the courts shall, for the proper maintenance of their offices, issue certificates of search and be paid for them at a fixed rate. The right of inspection must not, therefore, defeat the right of the clerk to his legal maintenance, and the statute directing that the indices shall be open to inspection must be so read as not to be repugnant with the law directing the clerk to charge a fixed amount for his certificates of search. If Congress had provided that the indices should be open to the inspection and examination of the public *so that companies might make transcripts from them in order to engage in the business of selling certificates of search*, the provision would, of course, have been in conflict with the provisions in the fee bill. The act of 1888 would in that event have been an amendment *pro tanto* of section 828, Revised Statutes. But both acts can be read together, for the later law gives no right to copy or to make such use of the indices. There was,

therefore, no amendment intended, and the court must give to both utterances of the legislature their proper force.

The question involved in this case is far-reaching in its results, as it affects the proper maintenance of the offices of the clerks of the courts in each judicial district throughout the United States.

The practical effect of the decree entered herein, if it be permitted to stand, will be to give to the Commonwealth Title Insurance and Trust Company, and similar organizations, a source of revenue derived from the work of the clerks and their assistants; it practically annuls the statutes of the United States relating to fees for searches, which fees were provided as a source of revenue to said offices, of which the clerks should be paid for, *inter alia*, the preparation and preservation of these very indices.

That such would be the effect of this decree was clearly shown by the testimony taken in this cause, from which it appears that over one-half of the revenue of the offices of the clerks in this district is derived from the fees for searches, and all but a very trifling part of these fees come from the title companies.

It seems clear, therefore, that the burden is upon the party making a claim of right to use the court records for purposes of private gain and to the detriment of the custodian of the same, to show a clear right to do so.

To shift the burden the complainant below relies

upon section 828 of the Revised Statutes and the act of Congress of August 1, 1888.

The question is one of statutory construction. What is the true interpretation of the words "inspection and examination" used in the sections above quoted? As the court well knows, the cardinal rule of statutory construction is to discover and declare the intent of the lawmakers. Did Congress contemplate or intend that a corporation such as the complainant should have the free access which it demands to inspect and examine the indices and records in the clerk's office? We think not. We urge that if such permission were granted it would be an usurpation of the powers, duties, and rights of the clerk, by the practical establishment of another clerk's office, and a diversion of the fees and earnings of the office properly chargeable under the fee bills, and which primarily belong to the United States. (See Mr. Lincoln's statement, p. 11 of printed testimony.)

In seeking the true meaning of the provision of section 2 of the act of August 1, 1888, we must at the same time consider the last paragraph of section 828, Revised Statutes. The language used in both laws is almost identical. Section 828 is virtually a revenue act, and as such must be liberally construed in favor of the United States. It is subentitled "Clerk's fees," and provides in some eighteen distinct paragraphs for the fees of the clerks. It is submitted that, since its foundation, the unvarying custom of the Government has been to have its offices self-sustaining. In almost

every office, therefore, by various acts of Congress, fee systems have been established.

While there may be no "patent or copyright" in the court records kept by the clerk, Congress has as much right to use them as a means of raising a revenue for the expenses of the courts as it has to grant a patent or copyright, and to limit the use of them as it limits the use of patented or copyrighted articles, and just as much as is necessary to serve its purposes in either case. By authorizing a fee for searches within the custody of the clerk, Congress has indicated its purpose to create a revenue from that source.

The defendant in this case does not receive a certain and specified salary. His compensation for the full, faithful, and sworn discharge of his duties is *entirely dependent* upon the amount of fees and earnings of his office. In addition to those services for which the clerk is permitted to make a charge, he is obliged to perform many other duties for which no fees are chargeable. And while Congress has not provided that every service rendered to parties in the office shall be subject to charge, it is provided that *certain services* shall be rendered by the clerk of the court and *a fixed amount be charged and collected* for such services, and that the fund derived from these only shall constitute the emoluments of his office.

The liability of the clerk and his sureties on his official bond, as well as his individual liability for a portion of the amount of the bond and to the full extent of the damages sustained by any person for any

error or omission of duty by him or his deputies, should be considered in connection with the method and amount of compensation allowed by Congress in determining the purpose and extent of the privilege of free inspection and examination of the records in his office to be allowed to the public.

Under sections 2 and 3 of the act of February 22, 1875 (First Supp., Rev. Stats., p. 65, 2d edition), provision is made for the amount of bond to be entered into by the clerk and his sureties.

The bond given by the petitioner in this case, and now in force, is in the sum of $20,000, which, under the provisions of the act above quoted, can be increased to $40,000 upon the demand of the Attorney-General.

The question here involved has frequently been before the courts, and, although the decisions are not uniform, the majority uphold the position of the petitioner in this case.

In the case of *Bean* v. *The People*, 7 Colorado Rep., 200 (1883), the language of the State statute providing for the public inspection and examination of records is much broader than that used in the statutes now under consideration. The case came before the court on mandamus, and in deciding the same said:

> The principal question presented by the record in this case is one of statutory construction purely. Section 667 of the general statutes provides that the county clerk shall keep his office "open during the usual business hours, Sundays and legal holidays excepted, and [that] all books and papers required to be kept in his

office shall be open for the examination of any person."

The cardinal rule of statutory construction is to declare the intent of the lawmakers. Counsel for the defendant in error contend that the section above mentioned needs and will admit of no construction. That the words "any person" used therein include each and every individual who may choose to demand an inspection of the county records. But we are not prepared to accept this conclusion; we feel confident that an examination of the statute is proper with the view of determining whether or not the legislature intended to grant the privilege here claimed.

Relators in this case assert the right under the law to examine and abstract the entire records of Gunnison County for the sole purpose of securing future private emolument from the sale of abstracts thus obtained; they do not seek information concerning a tract of land in which they themselves, or parties whom they represent, have or expect to have an interest.

Their business is permanent; to carry it on successfully they must not only by themselves or agents occupy the clerk's office for weeks, perhaps months, in abstracting the instrument already recorded, but they must also be there daily thereafter abstracting the conveyances filed from day to day. Their interruption and annoyance of the clerk are not temporary; they are continuing and permanent.

It matters not that the relators required no aid from him, for he is charged by statute with

the safe-keeping and preservation of the records, and is responsible for their truthfulness and freedom from mutilation. A single stroke of the pen, the erasure or addition of a single word, may change the character of the conveyance or destroy the most valuable property right. The clerk is unfaithful to his trust if he allows one of the record books to remain for an instant in the hands of a stranger out of his sight. If he performs his whole duty he must watch each and every person who examines or abstracts a single title record.

Did the legislature contemplate a business such as that of the relators and intend to impose upon the clerk these duties and responsibilities therewith? Did they intend to say to him: "You must give relators, gratis, a part of your time and attention on each and every weekday during your term of office?" If one person or partnership may subject him to this inconvenience, labor, and annoyance others may do the same; the abstract business is lawful and in populous counties usually quite a number of individuals or firms engage therein. The clerk's entire time might be monopolized in this way, and yet he is allowed no compensation therefor. * * *

It is urged that this business is a great public convenience and security; that parties interested may more readily and perhaps more cheaply procure desired information and abstracts; and that in case of loss thereof by theft or fire any portion of the records may be duplicated from the abstract office. * * *

> We are of opinion that the statute in question was not designed to allow individuals who wish to abstract the entire records for future profit in their private business, the privilege of using continuously the public property, and of monopolizing from day to day, for months and years, a portion of the time and attention of a public officer against his will and without compensation.

To the same effect is the case of *Newton* v. *Fisher* (1897), 98 N. C. Rep., p. 20.

In this case it was held that "While it is the duty of the register of deeds to permit all persons to inspect the records committed to his custody, he will not be required, without the payment of his fees, to allow anyone to make copies or abstracts therefrom."

The opinion of the court in this case is as follows:

> * * * No one has the right, to use the language of the learned judge in the court below, "to make copies or abstracts of the entire records of the office, including those instruments in which the person so desiring to make abstracts, etc., is not at the time interested, but simply anticipates that he will be at some time interested, and abstracts of which he desires to make for mere speculative purposes. This might have the effect to transfer from the register's office to the office of the attorney who might have a place of business more conveniently located a large part of the business and emoluments of the register of deeds, as no one would have the right to make copies of the records in the office of the register except upon

payment of the fees allowed by law for copies, and this would deprive the register of the emoluments of his office. Under this view the plaintiff would be entitled to every facility for the legitimate prosecution of his business by access to the records for the examination of instruments registered; but the court is not satisfied of his right to make an abstract of all transfers of real and personal property for the year 1896, without having an interest in the same, for the prosecution of his business or paying any fee therefor. If he has the right to make abstracts of all the records of 1896, he has the right to make them for all the years; and if he has the right to copy or make abstracts of parts of the records, it may be the material parts, he has the right to copy the whole. If it is the right of one, it is the right of all. Once concede this right and where will it end? The records of this court, of all the courts, of the executive departments, of all the public offices in the State would be subject to the same right in every individual in the State, and aside from the loss of just emoluments to public officers, the dangers and risks which they might incur in possible injury to the records affecting public and private rights, make it manifest that such right can not exist. It is not the right of all—it is not the right of one.

And again, in the case of *Buck and Spencer* v. *James D. Collins* (51 Ga., 391), it was held that—

A private citizen has not the right, against the consent of the superior court and without the payment of his fees, to examine the books

> of record in his office for the purpose of making a full abstract of the contents thereof, from the clerk's books, for publication.

And in the case of *Randolph's Estate, ex rel. Collier et al.* (82 Ala. Rep., 527), it was held by Chief Justice Stone:

> We said that it was not the unqualified right of every person to demand access to and inspection of the books or documents of a public office, though they are the property of the public and preserved for public uses and purposes.

See also *Weber* v. *Townley* (43 Mich. Rep., 534, 1880).

The right of the public to inspect the records of the clerk's office, as well as to make abstracts therefrom, has in several instances been considered both by the Federal courts and Government officials.

In November, 1885, the clerk of the United States court at Indianapolis wrote to the Attorney-General complaining that certain law firms had made private indexes from the public records of the clerk's office, and requested that the firms be enjoined from using them. This letter, together with the following instructions and opinion, was forwarded by the Attorney-General to the attorney for the United States at Indianapolis:

> WASHINGTON, *November 25, 1885.*
>
> J. E. LAMB, Esq.,
>
> *United States Attorney, Indianapolis, Ind.*
>
> SIR: Inclosed is a copy of a letter of the 19th instant from Noble C. Butler, clerk United States courts, Indianapolis.

He asks that certain law firms practicing in the United States courts, namely, William G. Anderson and Elliott & Butler, be enjoined from using certain private indexes which they had made from the public records of the clerk's office.

The basis of such an injunction is the theory and practice of the Department and the accounting officers of the Treasury that the expenses of the clerk's office must be paid before the clerk is entitled to receive compensation for his services, and inferentially this theory and practice means that all the earnings of the clerk's office primarily belong to the United States, out of which, by law, the Attorney-General allows a compensation to the clerk.

The Government must retain its right to its own fees. By its fee bill it has fixed a charge against all persons who ask for searches for information within the exclusive control of the Government's officer.

By the collection of this and other fees the Government is enabled to pay its officers, and forbids the practice of any private ingenuity to deprive the Government of its right to these fees as an injury to the Government that must be enjoined.

You will take such steps in this case as will succeed in putting an end to the practice above mentioned, either by requiring the parties who have the indexes mentioned to surrender them to the charge of the clerk of the court, quietly and without further action, or you will proceed to enjoin them from the use of the indexes.

It is hoped that you may be able to secure the desired end without resorting to the process of the courts, otherwise this is your authority for enjoining them from acts which deprive the Government from the enjoyment of its proper revenue.

Very respectfully,

A. H. GARLAND,
Attorney-General.

A bill in equity was thereupon filed against the said law firms asking for orders restraining them from using the indexes so made. The cases were heard before Walter Q. Gresham, and after a full hearing decided in favor of the United States, and decrees duly entered.

As has been stated, there are conflicting decisions, and this fact should be an additional reason why the writ of certiorari should be granted.

Respectfully submitted.

JOHN K. RICHARDS,
Solicitor-General.

JAMES M. BECK,
Assistant Attorney-General.

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FILE COPY.

Office Supreme Court U. S.
FILED
MAR 2 1903
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

SAMUEL BELL, PETITIONER,
v.
THE COMMONWEALTH TITLE INSURANCE and Trust Company. } No. 191.

BRIEF ON BEHALF OF THE PETITIONER.

JAMES M. BECK,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

SAMUEL BELL, PETITIONER,
v.
THE COMMONWEALTH TITLE INSURANCE and Trust Company. } No. 191.

BRIEF ON BEHALF OF THE PETITIONER.

This case arises on a writ of certiorari to the United States circuit court of appeals for the third circuit. It involves the right of a corporation, engaged in the business of insuring titles to real estate, to have access to the indices of the United States courts for the purpose of selling the information for profit.

These indices are prepared under the provisions of the act of August 1, 1888, section 2 (25 Stat. L., 357), which provides as follows:

> That the clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public.

Prior to the formation of title companies, which are of recent origin, it had been the unbroken custom for a period of over half a century, to order, on behalf of

intending purchasers of real estate, certain searches from the clerks of the courts. As the offices of the clerks of the courts were in part maintained in order to afford facility for the entry, docketing, and certification of liens upon real estate, it was not unnatural that the Government should have adopted the policy of making those for whom these expenses were incurred bear the burden, and, accordingly, section 823, Revised Statutes, declares that "the following, and no other, compensation shall be taxed and allowed to attorneys, * * * clerks of the circuit and district courts, marshals, etc., * * * except in cases otherwise expressly provided by law." Section 828 has reference to clerks' fees. Among the specific services for which the clerks are given fees, they are allowed:

> For every search of any particular mortgage, judgment, or other lien, fifteen cents.
>
> For searching the records of the court for judgments, decrees, or other instruments constituting a general lien on real estate, and certifying the result of such search, fifteen cents for each person against whom such search is required to be made.

Then, after two other provisions for their compensation, it is provided:

> All books in the office of the clerk of the circuit and district courts, containing the docket or minute of the judgments, or decrees thereof, shall, during office hours, be open to the inspection of any person desiring to examine the same, without any fees or charge therefor. (Section 828, Revised Statutes.)

It is to be noted that not all the books are to be open for inspection, but only those books which contain "the docket or minute of the judgments or decrees" of the courts. The indices are not "the docket or minute of the judgments or decrees," and it follows that they are not among the books which the clerks are required by this section to keep open for inspection. The judgment indices are, properly speaking, only the books by which reference may be made to the particular judgments appearing in the dockets and minutes.

Section 828, as we have seen, provides that the books "containing the docket or minute of the judgments or decrees" shall be open to inspection "without any fees or charge therefor." The reason for this provision is obvious. The particular litigant should be allowed access free of charge to the docket exhibiting the judgment in his favor or against him. As regards the indices, however, the rule would reasonably be different. They are kept primarily for the benefit of the clerk and only secondarily for the benefit of the public. They are especially part of the working plant of the clerk's office, and they form the means by which he makes the searches for which he is allowed compensation in the fee bill. There was, consequently, good reason for a different rule as to the inspection of the indices, and when in 1888 Congress came to provide specifically for them it was only natural that it should omit in the later legislation the words "without any fees or charge therefor."

The present controversy arises in the following manner. The presidents of three title insurance companies of the city of Philadelphia addressed a letter to the clerk of the United States circuit court and to the clerk of the United States district court, dated May 18, 1896 (p. 13 of record), in which they requested these clerks to name hours when it would be convenient for these corporations "to make abstracts from the judgment indices of the circuit and district courts showing judgments entered therein." Request was also made for an arrangement for a daily statement of all such judgments. These requests were refused by the clerks in question, by a formal letter dated June 8, 1896 (p. 14 of record), in which the objections to this course of business were pointed out. To this The Commonwealth Title Insurance and Trust Company by a modified request (record, p. 5), by which, in substance, they requested access, through their representatives, to the records and papers whenever employed to investigate the state of a title and incumbrances of customers. This request was also refused for the reasons stated in a reply dated July 14, 1896 (record p. 6).

One of the title companies thereupon filed a bill against the clerk of the circuit court, in which, after stating that the company in question was engaged "in the business of insuring titles to real estate; in making searches for liens and incumbrances against the same; in giving certificates as to the condition of such real estate as regards the existence of liens against the same," it prayed for a decree ordering the clerk to permit the complainant, through its properly authorized

representatives, from day to day, at such times and under such circumstances as will not improperly interfere with the said clerk and his assistants in the discharge of their duties, to have access to the indices and cross indices, and other books and papers in his office, showing the incumbrances against properties of which its customers are desirous of taking conveyances.

To this the respondent demurred, both on the merits and also on jurisdictional grounds, and this demurrer was overruled by the court. An answer was then filed and testimony taken, and the court, upon final hearing, entered a decree for the plaintiff, the decree now complained of (Record, p. 40). This decree was affirmed by the circuit court of appeals, and this court therefore granted a writ of certiorari.

The complainant must found his case upon a statutory right. If there can be said to have been any rule of common law upon the subject, it was that the right to inspect public records was confined to a person having some direct interest in the particular record sought to be inspected or copied, and that the right did not extend to one seeking to do so from mere curiosity or for his own private gain.

> 1 Greenl. Ev., 473, 475.
> *Hanson* v. *Eichstædt*, 35 N. W. Rep., 31.
> *State et rel., etc.*, v. *Rashac*, 35 N. W. Rep., 7.
> *Cormac* v. *Wolcott*, 15 Pac. Rep., 245.

In *Brewer* v. *Watson*, where no statute was relied upon, the court stated the rule as follows:

> The individual demanding access to and inspection of public writings must not only have

an interest in the matters to which they relate, a direct, tangible interest, but the inspection must be sought for some specific and legitimate purpose. The gratification of mere curiosity, or motives merely speculative, will not entitle him to demand an examination of such writings. (1 Wharton on Ev., 745; *King* v. *Merchant Tailors' Co.*, 2 Barn. & Ad., 115; *King* v. *Justices Stafford and Shire*, 6 Ad. & Ellis, 84; *Ex parte Briggs*, 1 Ell. & Ell., 881 (102 Com. Law, 879); *People* v. *Walker*, 9 Mich., 328; *Brewer* v. *Watson*, 71 Ala., 305, 1882.)

The question, therefore, is one entirely of statutory construction, and in determining the complainant's rights the fee bill and the other provisions of the law must be read together. Congress has said that the indices shall be open to inspection, but it has also said that the clerks of the courts shall, for the proper maintenance of their offices, issue certificates of search and be paid for them at a fixed rate. The right of inspection must not, therefore, defeat the right of the clerk to his legal maintenance, and the statute directing that the indices shall be open to inspection must be so read as not to be repugnant with the law directing the clerk to charge a fixed amount for his certificates of search. If Congress had provided that the indices should be open to the inspection and examination of the public *so that companies might make transcripts from them in order to engage in the business of selling certificates of search*, the provision would, of course, have been in conflict with the provisions in the fee bill. The act of 1888 would, in that event, have been an amendment *pro*

tanto of section 828, Revised Statutes. But both acts can be read together, for the later law gives no right to copy or to make such use of the indices. There was, therefore, no amendment intended, and the court must give to both utterances of the legislature their proper force.

The practical effect of the decree entered herein, if it be permitted to stand, will be to give to the Commonwealth Title Insurance and Trust Company, and similar organizations, a source of revenue derived from the work of the clerks and their assistants; it practically annuls the statutes of the United States relating to fees for searches, which fees were provided as a source of revenue to said offices, of which the clerks should be paid for, *inter alia*, the preparation and preservation of these very indices. That such would be the effect of this decree was clearly shown by the testimony taken in this cause, from which it appears that over one-half of the revenue of the offices of the clerks in this district is derived from the fees for searches, and all but a very trifling part of these fees come from the title companies.

By authorizing a fee for searches within the custody of the clerk, Congress has indicated its purpose to create a revenue from that source. The defendant in this case does not receive a certain and specified salary. His compensation for the full, faithful, and sworn discharge of his duties is *entirely dependent* upon the amount of fees and earnings of his office. In addition to those services for which the clerk is permitted to make a charge, he is

obliged to perform many other duties for which no fees are chargeable. While Congress has not provided that every service rendered to parties in the office shall be subject to charge, it is provided that *certain services* shall be rendered by the clerk of the court and *a fixed amount be charged and collected* for such services, and that the fund derived from these only shall constitute the emoluments of his office.

The question here involved has frequently been before the courts, and, although the decisions are not uniform, the majority uphold the position of the petitioner in this case. These decisions are as follows:

COLORADO.

Statute.—"All books and papers required to be kept in his (county clerk) office shall be open for the inspection of any person."

Decision.—*Bean* v. *People*, 7 Colorado, 200:

> We are of opinion the statute in question was not designed to allow individuals to abstract records for future profit in their private business against the will of the officer and without compensation.

GEORGIA.

Statute.—"All books kept by a public officer shall be subject to the inspection of all citizens."

Decisions.—*Buck* v. *Collins*, 51 Ga., 391; *Land Title Co.* v. *Tanner*, 99 Ga., 470.

These cases decide that under the above statute abstract companies have no right to make copies of the court records without the consent of the person in

charge of same, and without paying his fees, when the purpose is to use the same for gain.

ALABAMA.

Statute.—The public have the right to inspect public documents.

Decision.—*Phelan* v. *State*, 76 Ala., 51:

> We hold that the right claimed (to make copies) does not fall within the beneficent, yet narrower right of inspection.

KANSAS.

Statute.—"All books and papers required to be in their (the recorder's) offices shall be open for the examination of anyone."

Decision.—*Cormack* v. *Wolcott*, 37 Kan., 391:

> The right of inspection should be exercised only by persons who have an interest in the record. * * * It was not intended to give rights to parties to engage in private speculation. *The statute provides how copies shall be obtained*, viz, *by paying the fees therefor, and without further legislation that is the only way they can be obtained.*

VIRGINIA.

Code.—Registration books shall be kept and preserved by the registrar "and shall at all times be open to the public inspection."

Decision.—*Keller* v. *Stone*, 96 Va., 667.

Mandamus to compel custodian of records either to furnish copies of books in his custody or to permit

petitioner to make copies of the same. Mandamus refused.

> *Cardwell*, J.: The law not requiring him to allow copies to be made, a mandamus can not issue in accordance with the prayer of the petitioner directing respondent to make copies of the registration books in his custody or *to permit the petitioners to do so at their own expense.*

NORTH CAROLINA.

Statute.—The register shall be present at such time as will afford the public the right of inspection.

Decision.—*Newton* v. *Fisher*, 98 N. C., 20.

> While it is the duty of the register to permit all persons to inspect the records committed to his custody, he will not be required, "*without payment of his fees, to allow* anyone to make copies or abstracts therefrom."

MARYLAND.

Statute.—Gave particular company the right to make and procure copies and abstracts from the public records for the purpose of their business.

Decision.—*Belt* v. *Abstract Co.*, 20 Atl. Rep., 982.

Held that this company did not have the right to make searches and abstracts without the payment to the clerk of his statutory fees.

Cases from Michigan, Wisconsin, Minnesota, New York, and New Jersey have been cited as holding a contrary view, but an analysis of the statutes in these States will show that in most of them the legislature used broader language.

Thus, in Wisconsin, section 700 of the Revised Statutes, provides: "Every register shall open to the examination of any person all books and papers required to be kept in his office, *and permit any person so examining to take notes and copies of such books, records or papers or minutes therefrom.*" It was under this statute that the court, in the case of *Hansen* v. *Eichsted* (69 Wis.), refused to restrain an abstractor from using the records for the purpose of making abstracts.

In Minnesota, section 765, statutes of 1894, provides: "The register of deeds shall exhibit, *free of charge*, any of the records or papers in his official custody to the inspection of *any person demanding the same, either for examination or for the purpose of making or completing an abstract or transcript therefrom.*"

In the case of *State* v. *Rachac* (37 Minn., 372), the court conceded that at common law one engaged in the business of making abstracts had no right of inspection and examination of the records, but that under "its (the above-quoted acts) strong and general language" such a person did have such right.

In New York, Judge Daniels, in granting the right to make abstracts, under sections 1747 and 1751 of ch. 410 of the laws of 1882, said, "it has been made the duty of the register to permit all persons to have free access to the books, records, and indices of the office for search at all reasonable times during the daytime, and *he is directed to exhibit the same to the persons wishing to make searches.*"

In New Jersey it was held, in *Lum* v. *McCarty* (39 N. J. Law, 287), an attorney at law who desired to

make a search for a particular client, was permitted to do so. In the later case of *Barber* v. *Title Co.* (32 Atl. Rep., 222) the court restrained a title company from access to the records of the clerks of the county court for the purpose of making copies and setting up a rival office, thereby depriving the clerk of the emoluments of his office. In the opinion filed in this case it was said: "The case of *Lum* v. *McCarty* carries the right of the public to its extreme limit."

In this connection there would seem to be a fair distinction between a corporation seeking to abstract the records of the court and a member of the bar who acts in behalf of a client. The work in question is professional, and prior to the formation of title companies was exclusively the work of the legal profession. The tendency of our time is to substitute mechanical for professional methods.

This question has twice arisen in the United States courts. In November, 1885, the clerk of the circuit court of the district of Indiana asked instructions of the Attorney-General. Attorney-General Garland, in a letter dated November 25, 1885, instructed the United States attorney to enjoin the title companies from using the court records for private gain. A bill in equity was accordingly filed, asking for a restraining order upon those thus misusing the indices, and the cases were heard by the late Judge Gresham, who, after a full hearing, entered a decree in favor of the United States. No opinion appears to have been filed by Judge Gresham, who shortly thereafter died.

A contrary opinion was reached by Judge Caldwell in In Re Chambers, 44 Fed. Rep., 786. He held that the contention of the Government was in effect the assertion of a monopoly in its public records.

I submit that Judge Caldwell's reasoning is wholly at fault. The courts claim the exclusive right to issue a summons or subpœna, swear a witness or a juror, file a paper, and affix a seal, and may charge fees for all of these official services, and yet it is not contended that such claim of right, which arises under the same section of the Revised Statutes, constitutes an illegal monopoly. Nor could it be contended that the *right* of every litigant to process is inconsistent with a fee for a writ or subpœna.

The question is not merely one of revenue, although that alone, for considerations of public policy, should defeat the complainants; the question of the security of the indices and the convenience of the clerks of the court in using them are likewise involved. I submit a sound discretion is vested in the clerk of the court, as the custodian of the public records, as to the times and conditions under which copies can be made of public records, and a refusal by him of such use on the ground of interference with his own use of the records or with their safety is one with which the courts will not interfere. As to this, the clerk of the disrict court testifies as follows:

> I believe that if access were given to each of these companies and to all others desiring to have access to the indices and records of the

court, it would interfere with the clerks in their attention to the duties of their office, in thus using the indices and records, as also to give access to the same to members of the bar and others visiting the offices who might require it, and I believe if a large number of names were searched against by these companies and all desiring to make the searches, that it would require at least five or six hours daily, and this provided that each one were ready to take up his portion of the work.

As to the safe-keeping of the records, the clerks of both the circuit and district courts testified that the security of the books in their charge would be jeopardized if irresponsible people were permitted to have possession of the books. To detail someone to keep watch upon the same would be to put the Government to expense and trouble in order that the title companies could pay larger dividends. The clerks are obliged by law to give bonds for the safe custody of the official records. Should not the manner of their use be discretionary?

Under all the circumstances, the decree should be reversed, and the bill dismissed at the costs of the appellee.

Respectfully submitted.

JAMES M. BECK,
Assistant Attorney-General.

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No. 423.

No. 423, Term, 1901.

Supreme Court U.S.
FILED
NOV 23 1901
JAMES H. MCKENNEY,
Clerk

Brief of Johnson for Resp't

IN THE

Supreme Court of the United States.

Filed Nov. 23, 1901.

Samuel Bell, Petitioner,

vs.

The Commonwealth Title Insurance and Trust Company, Respondent.

ON PETITION FOR WRIT OF CERTIORARI.

OPPOSING BRIEF OF COMMONWEALTH TITLE INSURANCE AND TRUST COMPANY.

JOHN G. JOHNSON,
for Respondent.

2283

IN THE SUPREME COURT OF THE UNITED STATES.

Samuel Bell, Petitioner,

vs.

The Commonwealth Title Insurance and Trust Company, Respondent.

October Term, 1901.

No.

SUR PETITION FOR WRIT OF *CERTIORARI.*

OPPOSING BRIEF OF COMMONWEALTH TITLE INSURANCE AND TRUST COMPANY.

The respondent is a company, organized under the laws of Pennsylvania, for the purpose of examining titles for purchasers of real estate and of insuring the validity of the same and the condition thereof as to liens.

All judgments entered in the United States Circuit and District Courts for the Eastern District of Pennsylvania are liens upon real estate in such District.

No purchaser can safely accept a conveyance without having an examination made on his behalf as to the existence, or non-existence, of liens.

As the Clerks of said courts had denied the respondent access to their respective judgment indices, in cases where it was actually employed by its customers to make search for judgments, before filing the present bill it addressed to the Clerks a letter in these words:—

"Without at present discussing the questions which are "open between us, we desire wherever we are employed to "investigate the state of title and incumbrances, of customers

"of ours, intending purchasers or mortgagees, to ascertain "whether in your office there are any incumbrances affecting "the title. Will you let us know whether if we send from day "to day persons representing us in such matters to your re- "spective officers with a view to ascertaining the existence of "incumbrances, you will give our representatives thus seeking "for this information access to the records and papers in your "office?"

The Clerks, in reply, on the 14th July, 1896, refused the restricted access thus requested.

The bill in the present case was thereupon filed on the twenty-eighth day of December, 1896. No access whatever has since been permitted to said indices. If the present application for a *certiorari* be allowed no such access will be permitted until the determination by this court of the appeal.

The Clerks of said courts insist that every person desiring to purchase real estate in Pennsylvania must obtain from each of them his certificate as to the existence or non-existence of judgments, although the search can be readily made by the person or corporation investigating the title, without practical expense.

The demand which was made upon the Clerks and which was refused, was not that permission should be given to examine the indices generally, or to allow the making of a transcript thereof.

The decree made in the Circuit Court, affirmed by the Circuit Court of Appeals, was in these words:—

"The respondent shall permit the properly authorized rep- "resentatives of the complainant to inspect and examine the "judgment indices and cross indices kept by the respondent "as Clerk of the Circuit Court of the United States for the "Eastern District of Pennsylvania, in such way and manner "as will enable the complainant to prosecute its business as "insurer of titles; but subject to the following restrictions: "(1) The inspection and examination must in each instance "relate and be confined to a transaction or transactions which "at the time being shall be current or depending; and (2) "such inspection and examination shall be made only at

"such times and under such circumstances as will not inter-
"fere with the respondent or his assistants in the discharge
"of their duties or with the exercise of the right of other
"persons to have access to said indices and cross indices."

The Acts of Congress under which the decree was made run thus: Section 828, Revised Statutes, provides:—

"All books in the offices of the clerks of the Circuit and
"District Courts containing dockets or minutes of the judg-
"ment or decrees thereof shall, during office hours, be open
"to the inspection of any person desiring to examine the
"same without any fees or charge therefor."

The Act of 1st August, 1888, chapter 729, page 602, 1st Supplement, Revised Statutes, second edition, section 2, reads:—

"That the clerks of the several courts of the United States
"shall prepare and keep in their respective offices complete
"and convenient indices and cross indices of the judgment
"records of said courts, and such indices and records shall at
"all times be open to the inspection and examination of the
"public."

We submit that where a person is compelled to know whether or not there are judgments against a property about to be purchased by him, he has a right to employ a person or a corporation skilled in the business, to make the search. The right of inspection is not a personal one, limited to the purchaser. It is his right to employ others, possessing the requisite skill, to do for him what is necessary to be done, which cannot be intelligently done by himself.

The judgment indices are public records, open to everybody; but all which was decreed in the present case was, that a corporation employed by a purchaser to do for him the necessary duty of investigating titles is entitled to examine the indices in connection with such investigation.

In the brief of the petitioner, cases are cited which have no applicability, inasmuch as they involve different and broader demands by title companies.

JOHN G. JOHNSON,
For Respondent.

IN THE SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

Samuel Bell, Clerk, Petitioner,

vs.

The Commonwealth Title Insurance and Trust Company.

October Term, 1902.

No. 191.

[Record No. 18,316.]

ON CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

APPELLEE'S BRIEF.

In the absence of a brief for the appellant, the appellee is compelled to discuss the subject upon the lines of argument advanced for the appellant in the court below.

The purpose of the appellee was not to compel an examination of the judgment indices and cross indices in the Circuit Court of the United States for the Eastern District of Pennsylvania for the purpose of preparing duplicate dockets or books from which, in the general course of business, to make certificates. The right of examination of these indices was demanded and was accorded, under the restriction that it should be allowed only in those cases in which the appellee in the course of its business, as agent of an intending purchaser was engaged in the actual examination of the title which such purchaser, its client, was desirous to acquire. The appellant contends that no agent, or even counsel, of a

person contemplating the purchase of real estate can examine his judgment indices and cross indices. His claim is that the purchaser is compelled to make the examination through him and to pay him a fee for such examination and accompanying certificate.

In the Circuit Court, a bill was filed by the complainant (appellee), one of the three title companies in the city of Philadelphia, which transact the larger portion of the business of investigating titles to property therein situate, and of issuing policies of insurance of said titles as being free from incumbrances. The respondent was the clerk of said Circuit Court.

Antecedently to the filing of the bill, a correspondence had taken place between the clerks of the United States Circuit Court and District Court for the Eastern District and the title companies, the latter having made a general demand. Under the advice of their counsel, however, they subsequently limited this demand to a request to be permitted to examine the indices and cross indices in those cases alone in which they had been employed by actual customers to examine and pass upon titles the latter intended to take.

In order that the clerks might be apprised of the restricted demand a letter was addressed to them on the twenty-third day of June, 1896, in which it was said (Record, 5):—

> Without at present discussing the questions, which are open between us, we desire wherever we are employed to investigate the state of title and incumbrances, of customers of ours, intending purchasers or mortgagees, to ascertain whether in your office there are any incumbrances affecting the title. Will you let us know whether if we send from day to day persons representing us in such matters to your respective offices, with a view to ascertaining the existence of incumbrances, you will give our representatives thus seeking for this information access to the records and papers in your office? If you will do this we will allow other matters to remain in abeyance until such time as we shall deem it necessary to bring them to a conclusion.

The presidents of the three title companies received a reply from the clerks, dated fourteenth day of July, 1896, in which the restricted access thus demanded for the restricted purposes thus defined, was denied.

The bill was thereupon filed by the appellee, in which it averred (Record, 3):—

> II. Said company is engaged, *inter alia*, in the business of insuring titles to real estate; in making searches for liens and incumbrances against the same; in giving certificates as to the condition of such real estate as regards the existence of liens against the same in any of the courts of the Commonwealth, including the courts of the United States; and in doing, on behalf of persons contemplating purchases of real estate, all that is necessary in the way of examination of the titles thereof and for liens and incumbrances against the same.

It further averred (Record, 3):—

> V. It is impossible for the complainant to insure titles with safety, or to examine into, or to certify to its customers, the condition of the titles of, and the amount of incumbrances against, the properties they desire to acquire, without searching the said indices and cross indices of judgment records so kept by said clerk.

It further averred (Record, 3):—

> VI. The said clerk of said court, for a long time past, has been in the habit of requiring that a search should be made only by himself, to be certified by him, for which certificates he has demanded and received compensation. He has refused the complainant access to the said indices under any circumstances for the purpose of ascertaining the condition of liens and incumbrances against the properties whose title it is about to insure. This refusal has been made and persisted in, although the complainant has been at all times ready and willing to make such examination at times, and under circumstances which would not in any way interfere with the safe custody of, or convenient

use by, the clerk and those employed by him, of said indices and cross indices.

The bill stated the correspondence to which we have referred and that the complainant had demanded the right to send persons from day to day to the office of the clerk,

> to ascertain the fact of whether or not there were incumbrances, and if there were, in what form and to what extent, against properties intended to be purchased by its customers.

The refusal of the clerk to permit its representatives "seeking for such information, access to the indices, cross "indices, records and papers in his office, at such times, "and under such circumstances, as would not interfere "with the proper conduct of the business of the office of "said clerk," was averred.

The relief demanded by the bill was as follows (Record, 4):—

> (*a.*) A decree, ordering Samuel Bell, Esq., the clerk of the Circuit Court for the Eastern District of Pennsylvania, to permit the complainant, through its properly authorized representatives, from day to day, at such times and under such circumstances as will not improperly interfere with the said clerk and his assistants in the discharge of their duties, to have access to the indices and cross indices, and other books and papers in his office, showing the incumbrances against properties of which its customers are desirous of taking conveyances.
>
> (*b.*) A decree, ordering said Samuel Bell, Esq., clerk of the Circuit Court of the Eastern District of Pennsylvania, to permit properly authorized representatives of your complainant, at such times and under such circumstances as will not unnecessarily interfere with the use thereof by him and by his assistants, to have access to the judgment indices and cross indices kept by him, in such way and manner as will enable the complainant to prosecute its business, as an insurer of titles and investigator of incumbrances against properties in the city of Philadelphia, by ascertaining the judgments existing against such properties.

It will be observed that the relief demanded was access only at such times as would not improperly interfere with the clerk's use thereof, "to the indices and cross indices "and other books and papers in his office, showing the "incumbrances against properties of which its customers "are desirous of taking conveyances."

The alternative prayer was for access only at such times and under such circumstances as would not "un-"necessarily interfere with the business of the office, to "the indices and cross indices, for the purpose of enabling "the complainant to ascertain the judgments existing "against properties where in the course of its business it "will be necessary for it to insure the titles thereto or to "investigate the incumbrances against the same."

The bill demanded no general access, nor any right to take abstracts; but simply a right to access for the purpose of ascertaining for actual customers, whether or not there were incumbrances existing, shown upon the indices and cross indices, against specific properties or persons. The relief prayed for only gave to the complainant access for the purpose of enabling it to ascertain the incumbrances against properties its customers should be contemplating purchasing.

The demurrer to the bill being overruled by Judge Dallas, who was of the opinion that the complainant was entitled to examine the indices, cross indices, records and papers pertaining to judgments "for the specific purpose "of ascertaining the existence or non-existence of in-"cumbrances upon properties which its actual present "customers are intending to purchase," an answer was thereupon filed, which substantially amounted to an assertion:—

(1) That the appellee could make the necessary investigation for its customers, as to incumbrances, by paying the clerk for a certified search, (2) that it would be impossible for it "to have access to the said indices for "the purpose of said examination and inspection thereof "without seriously interfering with the safe custody of "and the convenient use by the clerk and those em-"ployed by him as well as other persons lawfully entitled

"to have access to the said indices and cross indices of "the judgment records in the aforesaid Circuit Court": and (3) that the clerk's compensation and the payment of clerical hire, stationery and other expenses connected with his office, is entirely dependent upon the fees and emoluments received by him from certifying the result of his examination of the indices and cross indices of the judgment records in his court, and that if the appellee and others "are allowed such access to and examination of "said indices and records for the purpose which com- "plainant requests the same, the office of defendant as "clerk of said Circuit Court will not be self-supporting, "and the fees and emoluments collected by him from "other sources will not be sufficient to pay him the com- "pensation to which he is entitled by law, and make "payment of the clerical hire and other expenses neces- "sarily entailed upon him, and connected with the proper "and full discharge of all his duties as clerk of said Cir- "cuit Court."

It was shown by Mr. Bonsall, vice-president of the complainant corporation, that its business is examining and insuring titles to real estate in the city of Philadelphia; that it examines as to incumbrances, and issues certificates as to the title and any incumbrances which may exist; that it issues its policies to the effect that the title is good and that no liens, judgments or other incumbrances affect it; and that it is not able to insure titles with safety without either an examination of the records of the United States Court for judgments or having certificates of search from the clerk.

He showed that the company had not been permitted by itself or by its employees to examine the judgment indices and cross indices to ascertain whether or not there were judgments affecting the titles it was asked to examine and insure.

Mr. Bonsall stated that in his opinion the time required to make all the searches required in connection with the titles his company could examine for its customers would not take over fifteen minutes per day; and that such examination could be made without in the least interfering

with the work of the office and without interfering with the safety of the books or records. He proved that his company had already made such examinations in the Courts of Common Pleas of this city, where the judgments are much more numerous, without incommoding the public or the office. He showed that the demand of his company to examine the indices had been refused, though it had offered to do it "under such regulations as "would prevent its interfering with the public or the "safety of the books."

Mr. Bonsall, of course, admitted that with certificates of search by the clerks of the courts, it could carry on its business, but said that this would entail, necessarily, upon the customers the additional cost of such searches.

Mr. Lincoln, then clerk of the District Court, was called, and testified that the official receipts of his office amounted in each of the years 1895 and 1896 to $9200, of which $4900 in round numbers came from certificates of search. He also testified that the expenses of the office for clerk hire, stationery and all other official expenses, exclusive of his own salary, amounted to about $4300. Colonel Bell, the clerk of the Circuit Court, testified to substantially the same thing.

It appeared later in the course of the proceedings, from the testimony of Mr. Bonsall, that the three title companies interested in these proceedings paid for searches to the two offices in the years 1896 and 1897, an average annual sum of $8642.62.

Mr. Lincoln, when asked why he had denied the complainant's claim of access, replied (Record, 21):—

> Because I thought that the result of it would annul the official earnings of the United States in the matter of searches or judgments, and certifying the results of same, under section 828 of the Revised Statutes, and gathering in for the United States the fees for the searches.

He testified that the three title companies could conduct their business in safety by paying to Colonel Bell and himself the costs of certified searches.

In reply to a question whether, if prayers A and B of the bill were granted, it would be possible for Colonel Bell and himself, "providing that other companies and indi-"viduals engaged in similar business to the complainant "companies" to discharge their other duties as required by law, he said (Record, 23):—

> I believe that if access were given to each of these companies and to all others desiring to have access to the indices and records of the court, it would interfere with the clerks in their attention to the duties of their office, in thus using the indices and records, as also to give access to the same to members of the bar and others visiting the offices who might require it, and I believe, if a large number of names were searched against by these companies and all desiring to make the searches, that it would require at least five or six hours' delay, and this provided that each one were ready to take up his portion of the work.

Mr. Lincoln further thought that if the access asked for by the complainant company was given to it, in connection with like access to like companies and individuals it would be difficult for Colonel Bell and himself—"I "think almost impossible"—to properly and carefully watch over the indices and cross indices and have the other duties of the office attended to.

On cross examination he admitted that the names all told, which were alphabetically subdivided, appearing in the indices, were probably seven hundred or eight hundred in each year. On cross examination he admitted (Record, 25):—

> Q. That book, of course, which contains indices and cross indices, is very frequently not in the actual physical use of any clerk? A. Very frequently. Q. There are times then, certainly half of the day, when that book containing indices and cross indices is not in use by your clerk making entries therein or searches? That is a fact, is it not? A. That is so. Q. Would there be as many as three hours in every day in which that book could be used by some

outsider, making examinations in it, without interfering with its use by you or your clerks? A. I and my clerks would have to use that book when the opportunities occurred from pauses or stops in other business in which we might be engaged. We could not be continuously employed in searches. But two of us make searches as the opportunity occurs. Q. Then, if some one else gave the book to you or your clerks, when you needed it, there would be many times during the day in which persons so giving it could look into it, without interfering with you or your clerks? Is that not so? A. That is so provided it could possibly be arranged that one person only, and not a dozen or fifteen, might be wanting to look at it in general. Q. Could not, then, a person waiting the convenience and necessities of yourself and your clerks, look at that book frequently during the day, if he regarded such use as a convenience by you, without interfering with you or your clerks, and yet seeing what was in the book? A. Any person waiting in the office during the entire day could find such opportunity. Q. There are many times during the day, are there not, when that book is lying unopened and unused? A. There are. Q. Mr. Bonsall has said that all the searching required by the three title companies who addressed the communication to you, could be done taking up half an hour of each day. What is your judgment as to that fact? A. They have had an average, say of fifty names a day to make search against, and in both ends I think that it would take them, for five men, about two hours and a half of each day. This is also without counting the pauses when the name searched against should occur and require examination, and without the delays incident to interruption of such clerk in the work by any other person desiring to look at the index. Q. Suppose that the three title companies were willing to take up thirty minutes of each day, to make their searches, undertaking to hand the book upon the instant of demand for use by yourself or any of your clerks, not taking the thirty minutes continuously, but in the intervals when you did not need to use the book,

would that interfere in any way with the work of the office? A. In itself, as thus stated, probably that can be done without interference, but as there are other persons and corporations that might also want to do the same thing, to provide for such a contingency would be an interference. Q. Are not the three title companies I have named customers for at least five-sixths of the searches which you certify?

A. I have not the means of saying what the amount of their searches are, because I do not keep a separate account of each party making searches; the average amount of searches is about nine hundred. Mr. Bonsall now pays me in check, and their amounts in check would proportion in the business more than I could state. Q. Do the three companies pay the two offices $9000 a year for searches? If so, that will make about what proportion of all the receipts during the year from searches in the two offices? A. Well, they do not pay any such sum as that. They pay the two offices together, say, $8900, instead of $9000. I had the impression they did not pay us over $3000 apiece.

Mr. Lincoln further testified (Record, 27):—

Q. Do you not have time with intervals when the index book is not used, to respond to all demands by the three title companies for certificates of search? A. For the three title companies alone if there were not other persons. Q. But you do now have plenty of time to respond to certificates of search from all quarters, do you not? A. We meet every request that is made for searches, and also meet every request to look out the indices. Q. And doing this, there are still very considerable intervals of time when the index book is not being used? A. Very true.

Colonel Bell testified (Record, 30):—

Q. If the prayers A and B should be granted, would it be possible for you and your assistant clerks to perform the other duties which you are required to perform by the various Acts of Congress?

A. Not without very great difficulty and inconvenience. Q. What would be some of the difficulties and inconveniences that might arise? A. The difficulties, if those prayers were granted, would be that they would interfere with the examination by our clerks, not only of the searches that have been ordered, but also other inquiries that are made from us in relation to the matters connected with the same things and with the books of the office. * * * Q. How many clerks have you now in your employ? A. I have four, two specially assigned to making searches for judgments and liens.

Colonel Bell further testified (Record, 31):—

Q. Why did you refuse access to this complainant company of the indices and cross indices? A. Because we thought it would interfere with the collection of fees which are due the United States for making these searches.

Colonel Bell further testified (Record, 32):—

Q. Your book of indices and cross indices is kept in the District Court office, is it not? A. It is kept in the District Court office. Q. And the clerk who has charge of making the searches in the District Court indices also makes them in your indices? A. The clerk who searches makes out the certificates. Q. Who signs them, that clerk or some other? A. That clerk signs for me. Q. So that the same clerk signs for you and for Mr. Lincoln? A. The same clerks we have.

Upon being asked as to the length of time being consumed by the clerks in the searching, Colonel Bell testified (Record, 32):—

Q. About how much of his time, do you think, is occupied during the day in looking into or making entries in your indices book? A. I think about three hours a day is occupied by each of them, one in making out the certificates and one in making searches. Q. An hour a day, then, in making the actual searching in the book? A. Three hours, with the

> interruptions that he has from time to time. Q. The office is open from nine until four? A. Yes, sir. Q. If forty-six forty-ninths of the work of searching was done by somebody else, there would be a relief to that extent of his use of the book, would there not? A. If it was done by somebody else, undoubtedly. Q. Then, if the title companies were to do the searching for themselves to the extent that you do it now for them, the clerk would be relieved? A. Relieved to a certain extent, undoubtedly. Q. I have now before me the book of current indices running back to 1883. It is a book of about two hundred and fifty pages, would not you say? A. I suppose that is about the size of it. * * * Q. About how many entries are made a day, would you say, in this indices book? A. I cannot tell. Some days more, some days less, and some days none at all. Q. Not an average of more than five a day, do you think? A. No; not an average of more than five a day.

It will be observed that the clerks of the courts testified as to the length of time consumed in the use of the indices books without any accurate observation and vaguely. John E. Barry was therefore instructed to make an actual observation of the extent of the use of these books. He was in the District Court office, where the indices and cross indices for both courts are kept, on the 29th December, 1898, from 9 A. M. until 3 P. M., with an interval of thirty-five minutes for lunch. On the third day of January he was at the same office from 10.30 A. M. until 3 P. M., with an interval of twenty-five minutes for lunch. He testified that there was only one clerk of the office who used the books and who made examination in both sets. The name of the clerk was Murphy. Barry testified (Record, 34):—

> On the 20th of December, Mr. Murphy used the indices from 10.35 to 10.37, two minutes, and from 1.10 to 1.25, fifteen minutes. That was all that day they were used by the clerks in the office. Q. Did you notice their use generally by anybody? A. They were only used one other time by an outside party.

> Q. And for about how long? A. For twenty minutes. Q. That constituted the use of those two sets of indices during that day? A. Yes, sir.

The same witness further testified that on the third day of January the books were not used at all by any clerk in the office and that an outside party used them for five minutes between 1.40 and 1.45. He testified that during the whole time the clerks were engaged in the office at their desks.

Austin R. Cadwallader, who had experience in seaching in the Court of Common Pleas, and who was an expert upon the subject of the amount of time required for searching, testified (Record, 36):—

> Q. I wish you would tell us how long it would take in each day to make all the searches that are required for those three companies in both judgment indices? A. Sixty minutes. Q. Would that be amply sufficient? A. Fully.

Another expert, William Smith, testified (Record, 36):—

> Q. Tell us how long a time it would require to make all the searches for those three companies in both sets of indices each day. A. I think that with the names arranged in the order in which we generally arrange them, I could do it inside of an hour or very little over.

It will be observed that in the very careful letter written by the clerks of the courts on the 14th July, 1896, in which they refused access to the complainant, they put their refusal solely upon the ground of the interference with the collection of fees for searches which such access would give. They said nothing whatever about the inability to conduct the business of the office.

In view of the testimony which we have excepted at such length, it is impossible to reach the conclusion that the access allowed to the title companies can interfere in the slightest degree with the business of the office.

With an average of five entries per day made in the indices in the office of the Clerk of the Circuit Court, and

with the average of entries most probably less, made in the indices kept by the Clerk of the District Court, the use of these indices for making entries therein could not be interfered with by any examination the public might require.

It appeared that almost all the searching was done for the three companies concerned in this litigation, and that it could be done easily in the course of an hour in each day. If this searching should be done by the companies it would save almost all the searching now done by the clerks.

It was proven beyond all shadow of doubt that no possible official use could be interfered with by granting the relief prayed for by the bill. This relief was asked for in such a guarded manner that its grant could not interfere with the proper use of the books by the clerks.

The case was heard upon bill, answer and proofs; a decree (Record page 40) was thereupon entered by his Honor Judge Dallas, in which he ordered the Clerk of the Court to—

> permit the properly authorized representatives of the complainant to inspect and examine the judgment indices and cross indices kept by the respondent, as clerk of the Circuit Court of the United States for the Eastern District of Pennsylvania, in such way and manner as will enable the complainant to prosecute its business as insurer of titles; but subject to the following restrictions:—
>
> 1. The inspection and examination must in each instance relate and be confined to a transaction or transactions which at the time being shall be current or depending; (2) Such inspection and examination shall be made only at such times and under such circumstances as will not interfere with the respondent or his assistants in the discharge of their duties or with the exercise of the right of other persons to have access to said indices and cross indices.

Thus restricted, the appellee is permitted to make no examination of the indices or cross indices, except for

the purpose of enabling it to certify to an actual customer the state of the judgments against a title proposed to be taken by him in a transaction current and depending.

Such restriction and examination must not be permitted to interfere with the clerk or his assistants in the discharge of their work, and must not be so exercised as to interfere with the right of other persons to access.

The question, therefore, presented to this Court is: Whether a person, about to take title to real estate and obliged to inform himself concerning the existence or non-existence of liens against the same, can make this examination through a person or corporation conducting for him the business of examining the title of the property about to be purchased and the condition of the incumbrances against the same? Must the person who is obliged to have examination made of the indices and cross indices, under penalty of taking property subject to liens thereon, make the examination himself, or must he, after employing a person or corporation skilled in the business, order from the clerk a certificate of search without any opportunity to avail himself of the services of the skilled person or corporation employed by him in making such examinations?

Under the statutes, every judgment entered in any of the indices or cross indices of the Circuit Court or of the District Court of the United States, is a lien upon the property of the real estate substituted therein at the time of the entry of judgment. Every purchaser is charged with notice of the existence of such liens. It is therefore his duty to examine the same. Surely, this duty can be delegated by him to some one familiar with the subject and willing to guarantee the result.

We are not dealing with a class of cases cited in the Court below by the counsel for the appellant where title companies assert their right to copy bodily the books of record of the courts for the purpose of using the same thereafter in the course of future business. Grant that the right of inspection and examination is limited to some person interested therein, and still we have in the pres-

ent case a demand for such inspection and examination by some one whose duty it is, as the agent of the person taking title, to ascertain the condition of the latter.

It may be that a right to inspect and examine does not carry with it a right to copy and reproduce. The latter right was not claimed by the appellee, and was not accorded.

In the court below, Beam *vs.* The People, 7 Colorado Rep., 200, was cited, but in that case, which was one of *mandamus*, the relators appealed to "the right under the "law to examine and abstract the entire records of Gun- "nison County for the sole purpose of securing future "private emolument from the sale of abstracts thus ob- "tained." The court said that the business of the relators was permanent, and that to carry on the same successfully, they would be obliged, not only by themselves or agents, to occupy the clerk's office for weeks, perhaps months, in abstracting the records already recorded; but they must be there daily thereafter abstracting the conveyances filed from day to day.

The court put its opinion upon this statement:—

> They did not seek information concerning a tract of land in which they themselves, or parties whom they represent, have or expect to have an interest.

In the case of Newton *vs.* Fisher, 98 No. Car. Rep., 20, also cited in the court below, the court refused the right to make copies or abstracts

> of the entire records of the office, including those instruments in which the person so desiring to make abstracts, &c., is not at the time interested, but simply anticipates that he will be at some time interested, and abstracts of which he desires to make for mere speculative purposes.

The court said:—

> Under this view the plaintiff would be entitled to every facility for the legitimate prosecution of his business by access to the records for the examination of instruments registered, but the court is not satis-

fied of his right to make an abstract of all transfers of real and personal property for the year 1896 without having an interest in the same for the prosecution of his business or paying any fee therefor.

In the case of Buck & Spencer *vs.* Collins, 51 Georgia, 391, also cited in the court below, the right which was denied was that of examining the books of record of the Superior Court "for the purpose of making a full abstract "of the contents thereof, from the clerk's books for pub-"lication."

In the court below, a case was referred to, never reported, concerning the facts of which there is considerable doubt, purporting to have been decided by the late Judge Gresham. What appears to have been done in that case was to enjoin a title company, or law firm, which had made private indices from the public records of the clerk's office, from using the same. It does not appear, with any clearness, or definiteness what had been done. It is very apparent, however, from what is stated in the report of that case as given in the court below, that no right of inspection and examination of records for the purpose of ascertaining a client's title, was refused.

It was said in the court below that an Act of Congress authorized the clerks to charge certain sums for certificates of search, and that without the emolument derived from this source, the office receipts would be insufficient to meet the office expenditures. In view of the fact that the statute compelled the clerks to allow the inspection and examination of the records, it is difficult to gather from a permission to charge a fee to those who wish certificates signed and sealed by the clerk, a compulsion upon those who have the right to inspect and examine, to pay for such certificates where they do not wish them, and to lose the personal right conferred by the statute.

If the compensation allowed by the statutes of the United States is insufficient to support the expenditures of the office, the remedy must be found in additional legislation. It cannot be accorded by the courts by making absolute a denial by the clerks of a right of examination expressly conferred.

Section 828, Revised Statutes, provides:--

> All books in the offices of the clerks of the Circuit and District Courts containing the docket or minutes of the judgments, or decrees thereof, shall, during office hours, be open to the inspection of any person desiring to examine the same, without any fees or charge therefor.

The Act of 1st August, 1888, chapter 729, page 602, first supplement Revised Statutes, second edition, section 2, reads:—

> That the clerks of the several courts of the United States shall prepare and keep in their respective offices, complete and convenient indices and cross indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public.

The right of inspection and examination which is given by the statute, is one to the "public" generally, without restriction against any portion of the public and without any requirement that the public demanding the inspection shall be interested in the matter. The dockets and minutes, which are ordered to be open to the inspection, are to be "open" to the inspection of any person desiring to examine the same.

It would be very difficult to find a ground for refusal of the right of inspection, because of the person demanding the same having no personal interest in the matter. Certainly, under these broad words of grant, there can be no denial of the right of inspection to some one interested in making the same, in order that he or it may perform for a client a duty necessary to be performed, which the latter is hardly competent to perform for himself.

No man in Pennsylvania can purchase property without being bound to take notice of all judgments entered in the offices of the United States Circuit and United States District Courts. It is incumbent upon him to examine such records before he can deal with the owner. Many men would be unable to make such examination personally.

Titles are always examined by persons skilled in such business. The title companies perform the duties of conveyancers. They examine titles and, as a part of their general duty, make searches.

No Act of Congress has ever compelled a person having a right to examine the records to take a certificate of search. To compel a man to purchase property, at the risk of finding the same subject to incumbrances, and to deny him the right to go to the records himself, in person, or by his agent, to see whether incumbrances exist, would be absurd.

In Lum *vs.* McCarty, 39 N. J. Law, 287, Lum was employed to search a specified title, and the Court of Errors and Appeals held that he had a right of access to the records in the court's office, without the paying of fees to the clerk.

In Barber *vs.* West Jersey Title and Guaranty Company, 32 Atlantic Reporter, 222, the same court dealt with the case of a title company which "claimed the right to "have free access to the public records and files in the "office of said county clerk, daily during the ordinary "business hours of each business day, for the purpose of "inspecting and making abstracts therefrom, and mem-"oranda of the contents thereof." It reversed the decree of the Chancellor which had awarded an injunction in favor of the company, saying:—

> The case of Lum *vs.* McCarty carries the right of the public to its extreme limit. The respondent, by force of its incorporation, has the same right to inspect the public records which may lawfully be exercised by an individual. Every person, without legislative authority, may engage in the business of examining and guaranteeing titles as fully as this company is empowered to do by its Act of incorporation. When such a person or a company with such authority is employed to examine and guarantee a particular title, the clerk, upon demand, is bound to give access to the records for that purpose, subject to reasonable rules and regulations.

These decisions in New Jersey were made under legislative provisions which, whilst they gave access to the books to every person in proper season, coupled with it the following:—

> And be entitled to transcripts from the same on paying the fees allowed by law.

In a foot note of Uhle to 29 Am. Law Register, N. S., page 60, most of the decisions of the different courts are summarized.

In People *vs.* Richards, 1 Northeastern Reporter, 258, it was held:—

> The register of deeds of Kings County having denied to the agent of a company copying the records in his office the right to keep such a number of men employed in such copying as would obstruct the public business, but having permitted such company to keep three men so employed in his office, properly, upon the introduction of a fourth man, who was represented as the employee of another company, denied the use of such office to the latter; the two companies being known by such register of deeds to have the same officers, and suspected by him to be in effect one and the same company.

The court said:—

> Under the laws applicable to the register of Kings County, he is the custodian of all the books and records in his office. But it is provided that such records shall "at all proper times be open for the "inspection of any person paying the fees allowed by "law."
>
> These records are therefore public records, which every person has a right to inspect, examine and copy, at all reasonable times, in a proper way; and the register cannot deny access to his office or to the books for such purposes, to any person coming there at a proper time and in an orderly manner. But he must necessarily have control of his office and of the records, and must have some discretion to exercise as to the manner in which persons desiring

to inspect, examine and copy the records may exercise their rights. He must transact the current business of the office, and allow all persons reasonable facilities to exercise their rights in his office. He cannot give the right to one person or one corporation to occupy his office to the exclusion of others; and each person must exercise his rights in the office consistently with the exercise of similar rights by others. It is clear that this relator could not properly put twenty-five or thirty men into the office, and thus block up the office and interfere with the register in the discharge of his duties. He must have some right to say how many persons the relator could send there to work at one time.

In Day *vs.* Button, 56 Northwestern Reporter, 3, it was held:—

It is sufficient to say that relator asks the privilege of examining all records and files in the office and of making memoranda therefrom, for the purpose of making a set of abstract books. The respondent refused this privilege on the ground that the public convenience would be interfered with thereby. He offered the privilege of making an abstract or search or of copying any instrument recorded, but declined to allow him and his assistants to work continuously at the table provided for use of the public, claiming that it was being monopolized by them to the exclusion of the public. * * * The record seems to warrant the conclusion that respondent denies the right of relator to the use of the records, and a place to make memoranda for a set of abstract books, upon the ground that he has no legal right to the same. If the case of Webber *vs.* Townley, 43 Mich., 534, 5 N. W. Rep., 971, justifies this contention, we think the decisions of this court in the cases of Burton *vs.* Tuite, 78 Mich., 363, 44 N. W. Rep., 282; 80 Mich., 218, 45 N. W. Rep., 88, have overruled the case of Webber *vs.* Townley and established the right of a person to look at the records and make memoranda for a set of abstract books. This right does not permit the register to be unduly annoyed by a large force, or

by work at unseasonable hours, or by the monopoly of furniture, office room or records to the exclusion of other persons, or with his rights to prescribe a reasonable use of the same. It does, however, require that he recognize relator as one of the public and accord to him reasonable privileges for the accomplishment of his purpose.

In State *vs.* Rachac (Minn.), 35 N. W. Rep., 7, the syllabus reads:—

> The right to inspect the public records and papers in the office of the register of deeds, "either for ex- "amination or for the purpose of making or com- "pleting an abstract or transcript therefrom," given by Gen. Stat. Minn., 1878, C. 8., section 179, * * * is not limited to those having some interest in such records.
>
> Those who are in the business of making and furnishing abstracts of title to others for completion are entitled to this right for the purpose of making or completing their tract indexes, subject, however, to such reasonable rules as the register of deeds may prescribe to secure the safety of the public records.

In Burton *vs.* Tuite (Mich.), 44 N. W. Rep., 282, the Act of Michigan provided that all custodians of records shall furnish proper and reasonable facilities for the inspection and examination of the records and files in their respective offices, and for making memoranda or transcripts therefrom during the usual business hours to all persons having occasion to make examination of them for any lawful purpose.

It was held that plaintiff's business, being that of making abstracts of title and furnishing the same to those wanting them for a compensation, was as legal as that of a lawyer or real estate dealer, and that it was entitled to full access to the records.

In Hanson *vs.* Eichstaedt (Wis.), 35 N. W. Rep., 30, an access was allowed for the purpose of making abstracts, but the statute there provided that the register should "permit any person so examining to take notes and copies "of such books, records or papers, or minutes therefrom."

In the court below, much stress was put upon the fact that after examining any special title for the purpose of ascertaining the condition thereof and the liens against the same, the appellee, as part of its corporation business, issues certificates. The duty performed by the appellee is that of examination of title for a client. The same duty would have been performed, under the old regime, by a lawyer or conveyancer. The fact that the corporation performing it issues a certificate, or policy, for which it is paid and which renders it liable for negligence or for mistake, however arising, cannot affect the legal right. Every person taking a title has a right to cause the same to be examined and to take whatever assurance can be legally given him by an individual or corporation.

The sole question for consideration is, whether or not a person or corporation undertaking for a client the duty of ascertaining the condition of a title and the incumbrances against the same is entitled to a personal examination, without paying for a not desired certificate of search by the clerk?

The answer to this, we submit, is given, in the clearest and most unequivocal form, in the statutes we have quoted.

It is hardly necessary to consider the rather strained apprehension entertained by the clerks, of interference with them in the discharge of their duties, in view of the fact that the decree puts upon the right to inspect a condition that it shall not thus interfere.

As we have shown, by the citations we have made from the testimony, there can be no interference, by any inspection or examination that will be necessary, with the discharge by said clerks in the fullest possible manner of their duty.

In the brief which accompanied the petition for allowance of a *certiorari* it was said that the question "is "the right of a corporation engaged in the business of "insuring titles of real estate to have access to the records "of the court for the purpose of selling the information "thus acquired for profit." The question actually presented is, the right of a person acting in a particular

transaction for a purchaser obliged to take notice of liens against a property intended by him to be acquired, to make, on behalf of such purchaser, an examination, of what the court records show as to such liens. Every conveyancer or lawyer who makes an examination for his client thereby acquires a "profit;" but such "profit" is one which results from the exercise of his profession or vocation. No right is claimed "to divert the revenues "of the Government and to discharge the duties of the "clerks of the courts." The Government has no right to the revenue resulting from the examination by a purchaser or his agent of the court records. It is not rendered obligatory upon a purchaser to rely upon the clerks of the courts for making an examination he is entitled to make for himself.

If a purchaser desires the security of a certified search by the clerk of the court, he can only obtain the same upon the payment of a certain fee. If, however, he does not care for such security, there is no obligation upon him, either to demand the certificate, or to pay therefor.

In the application for the *certiorari* it was stated that Section 828 of the Revised Statutes did not mention, amongst the books which were to be open to the inspection of any person desiring to examine the same, the judgment indices and cross indices. It was conceded herein that the Act of 1st August, 1888, (25 Statutes at Large 357; Supplement to R. S. Vol. 1, 2nd Ed. page 602), enacted that judgments and decrees rendered in the Circuit and District Courts should be liens on the property throughout the State in which the judgments were rendered, and that it compelled the clerks of the several courts to prepare and keep in their respective offices complete and convenient indices and cross indices of the judgment records thereof, and that "such indices and "records shall at all times be open to the inspection and "examination of the public." It was suggested that the words, "without any fees or charge thereof," were purposely omitted, because similar words had been used in section 828.

A failure in a later statute to repeat an unnecessary

provision grounds no implication of intention. A direction that indices shall be kept which shall at all times be open to the inspection and examination of the public necessarily excluded any right to charge for an inspection and examination made a matter of right.

It was further suggested in the application for the *certiorari* that a person entitled to examine a public record must have "some direct interest in the particu- "lar record sought to be inspected or copied." This suggestion is not in accord with a direction to allow access to "the public" without restriction or limitation. The purchaser, ignorant of the proper method of examining what is necessary for him to know, is entitled to whatever assistance is required for the full exercise of his right.

It is unnecessary, however, to consider whether "the "gratification of mere curiosity" is allowed under an unlimited direction to permit public inspection and examination. An examination in the present case was demanded for the benefit of one who had an interest in the subject matter. It was not demanded "for purposes of private "gain;" but, for the purpose of enabling a purchaser, bound to take notice of what appeared in the indices and cross indices, to ascertain facts of which he was obliged to take notice, through a properly constituted agent. It would be necessary for him to pay such agent for his services, and the fact that the agent was thus paid did not militate against the principal's right of inspection, in person and by proxy.

The decree in the court below did not accord a right to make copies or abstracts. No such right was demanded. It merely gave permission to inspect and examine with reference only to a transaction or transactions at the time being current or depending, under such circumstances as would not interfere with the clerks or their assistants in the discharge of their duties, or with the exercise of the right of other persons to have access to said indices and cross indices.

JOHN G. JOHNSON,
For Appellee.

Supreme Court of the United States.

No. 191.—October Term, 1902.

Samuel Bell, Clerk, Petitioner, *vs.* The Commonwealth Title Insurance and Trust Company.	On writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[April 6, 1903.]

By section 828, Rev. Stat., clerks of the Circuit and District Courts are allowed certain fees for searching records for judgments, decrees, &c., and certifying the results of such searches. In the same section is this provision:

"All books in the offices of the clerks of the Circuit and District Courts, containing the docket or minute of the judgments, or decrees thereof, shall, during office hours, be open to the inspection of any person desiring to examine the same, without any fees or charge therefor."

Section 2 of the act of August 1, 1888, (25 Stat. 357,) reads:

"The clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public."

On December 28, 1896, the Commonwealth Title Insurance and Trust Company commenced a suit in the Circuit Court of the United States for the Eastern District of Pennsylvania against Samuel Bell, clerk of that court. The company is engaged in the business of insuring titles to real estate, making searches for liens and incumbrances upon the same, and issuing certificates in respect thereto, and sought a decree giving to it access to the judgment indices and cross indices kept by the clerk. The case proceeded to a decree as follows:

"And now this sixteenth day of January, 1901, this case having come on to be heard upon pleadings and proofs, and having been argued by counsel, it is ordered, decreed and adjudged that the respondent shall permit the properly authorized representatives of the complainant to inspect and examine the judgment indices and cross indices kept by the respondent, as clerk of the Circuit Court of the United States for the Eastern District of Pennsylvania, in such way and manner as will enable the complainant to prosecute its business as insurer of titles, but subject to the following restrictions:

"The inspection and examination must in each instance relate and be confined to a transaction or transactions which at the time being shall be current or depending; and such inspection and examination shall be

made only at such times and under such circumstancess as will not interfere with the respondent or his assistants in the discharge of their duties or with the exercise of the right of other persons to have access to said indices and cross indices."

This decree was affirmed on September 27, 1901, by the Circuit Court of Appeals, (110 Fed. Rep. 828.) On December 2 of the same year the case was brought here on certiorari. (183 U. S. 699.)

Mr. Justice BREWER delivered the opinion of the Court.

The question presented is to what extent a company engaged in the business of examining titles and certifying thereto may have access to and use the indices and cross indices of the judgment records prepared by the clerks of United States courts. The statute declares that they "shall at all times be open to the inspection and examination of the public." This company as one of the public has a right to this inspection and examination. It has no monopoly therein and cannot interfere with the clerk or his assistants in the discharge of their duties, or with the equal rights of other persons to such inspection and examination. But this limitation is expressly provided for by the second of the two restrictions imposed in the decree. Under this decree the clerk, as custodian, can make such reasonable regulations as will secure to him and his assistants full use of all the books and records of his office—which, of course, is a primary matter to be considered—and also will guard against any tampering with or injury to those books and records, and at the same time give to the plaintiff and others access to the indices. From the testimony it is clear that there can be no difficulty on the score of time or otherwise in affording to this company and all others interested every proper facility for inspection and examination. Indeed, it is not contended that there is any trouble in that direction.

But the contention is that the office of clerk is not a salaried office; that he is paid by fees; that the fees for searches and certificates thereof have amounted to a very considerable sum, and in this office have resulted in a surplus above the maximum of compensation allowed by law to the clerk, which has gone into the Treasury of the United States, whereas if this plaintiff and other like companies situated in Philadelphia, which are monopolizing the business of examinations of title, should be permitted to make their own inspection and examination of these indices, a large part of the fees hitherto received by the clerk will be lost, his maximum of compensation will not be reached, and there will be no surplus to be paid into the Treasury of the United States. It is insisted that although by the terms of section 828 the judgment records are open to the inspection of any person without any fee or charge therefor, Congress, in directing the preparation of the indices and cross indices and that they

should be open to the inspection and examination of the public, did not add thereto "without any fee or charge therefor," and thus manifested its intent that they should not be so used as to interfere with the fees theretofore received by the clerk. We cannot so interpret the statute. If these indices were intended merely for the convenience of the clerk and to facilitate his work, the making of them would undoubtedly have been left to his discretion. The convenience of the public and assistance to those interested in the judgments were obviously in the thought of Congress, for it declared that they should be open to the inspection and examination of the public.

Very likely, at the time of the passage of the act, the monopolizing of the business of examining titles by one or two corporations was not contemplated. The work was scattered among the separate members of the bar, each one for his own client examining the title to property in which such client was interested. But if Congress provided and intended to provide that one, interested in the title to real estate and desiring an examination of judgment liens thereon, should, either by himself or agent, have access to these indices, that intent and that provision are not changed by the fact that the business has passed from the many to a few. The same right of inspection exists whether one is examining only the title to a single piece of real estate or the titles to a hundred. The inspection is an assistance to the examination of titles, and obviously Congress intended that these indices should be open to the inspection of those rightfully making such examinations.

Whether parties have a right to make copies in full of these indices is not a question before us, for the decree carefully limits the right of inspection to a transaction or transactions at the time current or depending. So that all that this plaintiff is allowed by this decree is an inspection and examination of these indices, so far as may be necessary to assist in the examination of a title for which it is then employed.

We see no error in the decree, and it is *Affirmed.*

True copy.

Test:

Clerk Supreme Court, U. S.